2014

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2014

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2014 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS

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Volume 8B

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2014 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 27. TAXATION AND FINANCE

CHAPTER 103. State Budget

MISSISSIPPI PERFORMANCE BUDGET AND STRATEGIC PLANNING ACT OF 1994

SEC.

27-103-159. Certain state departments required to provide inventory of programs and activities; components of inventory.

CHAPTER 104. State Fiscal Affairs

MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT

27-104-161. No authority to review, approve or deny expenditures of Legislature.
27-104-163. Publication of meeting notice on searchable website; applicability.
27-104-165. Phased-in plan for procurement portal authorized.

MISSISSIPPI CODE 1972

ANNOTATED

VOLUME EIGHT B

TITLE 27

TAXATION AND FINANCE

CHAPTER 55

Gasoline and Motor Fuel Taxes

ARTICLE 7.

SPECIAL FUEL TAX.

§ 27-55-527. Special fuel taxes; exemptions and allowances.

(1) There shall not be included in the measure of the tax levied in this article any special fuel:

(a) Sold or delivered by a bonded distributor of special fuel to a second bonded distributor of special fuel within this state, but nothing in this exclusion shall exempt the second bonded distributor of special fuel from paying the tax unless the second bonded distributor of special fuel sells or delivers said special fuel to a third bonded distributor of special fuel, in which event the third bonded distributor of special fuel shall be liable for the tax.

(b) Sold to the United States government for use of the Armed Forces only, and delivered in quantities of not less than four thousand (4,000) gallons.

(c) Delivered to a bonded warehouse for storage within this state for the United States Department of Interior.

(d) Exported to a destination beyond the borders of this state by a bonded distributor of special fuel when the tax on such special fuel has been paid or on which the tax liability imposed by this article has accrued against such bonded distributor.

(e) Imported by, or sold to, any refiner or processor in this state for the purpose of being refined or further processed.

(f) Sold or delivered to any person within this state to be used as a herbicide or as a solvent for insecticides, wood preservatives and like products, or when so used in a commercial process that they become a component part of any manufactured product or where used as a processing agent in the treatment of raw material in manufacturing any product.

(g) Sold or delivered to be used for test purposes at any regularly established testing laboratory in this state.

(h) Sold to be consumed as fuel by any boat, vessel, ship, towboat or dredgeboat, or sold to the holder of a Marine Dealers Permit for resale or distribution as fuel for a boat, vessel, ship, towboat or dredgeboat.

(i) Sold as bunker oil or sold to be used for the generation of heat in a firebox or furnace.

(j) Sold or delivered to be used for the purpose of generating electricity.

(k) Sold for use as fuel in a railroad locomotive when subject to the tax levied by Section 27-59-301 et seq.

(*l*) Sold or delivered in bond, or sold or delivered, to any person within a foreign-trade zone within this state and sold, used, consumed, distributed, stored or withdrawn from storage and used to propel aircraft on an international flight including any interim stops within the United States so long as the origin or ultimate destination of the aircraft is outside the United States and District of Columbia. As used in this paragraph, "foreign-trade zone" means a foreign-trade zone operated and maintained by a public or private corporation under the provisions of Sections 59-3-31 through 59-3-37.

(m) Sold to be consumed as fuel by planes used by a commercial airline for new interstate air service offered by a new carrier in the market, for interstate service to a new city by an existing airline or for additional interstate service to a city already served by a commercial airline, for a period of twelve (12) months after the date the service is established.

(2) The exemptions set forth in paragraphs (f), (h), (i) and (j) of subsection (1) of this section shall not apply to special fuel used in performing contracts for construction, reconstruction, maintenance or repairs, where such contracts are entered into with the State of Mississippi, any political subdivision of the State of Mississippi, or any department, agency or institution of the State of Mississippi or any political subdivision thereof.

(3) Evidence of exempt transactions provided in this section and the subsections thereof shall consist of copies of invoices, documents or any other evidence that may be required by the commission.

(4) Any person other than a bonded distributor of special fuel who has delivered or sold special fuel on which the tax has been paid by him to the vendor may, if the special fuel is subject to exemption under this article, assign his claim for exemption to any bonded distributor of special fuel in this state. Such distributor may deduct the amount of the tax exemption from his next special fuel report, provided the distributor furnishes evidence satisfactory to the commission that the claim for exemption is valid.

(5) When special fuel is withdrawn from the storage tank of a refiner, processor, marine or pipeline terminal operator and the tax is paid on such special fuel and it or any part thereof cannot be delivered to a purchaser, said refiner, processor, marine or pipeline terminal operator may deduct the tax on all or that portion of such special fuel not delivered to a purchaser from its next special fuel distributor's tax report, provided that such refiner, processor, marine or pipeline terminal operator submits with such tax report: (a) a written report setting forth the reasons why such delivery could not be made, and (b) proof or evidence satisfactory to the commission that the tax in question had theretofore been paid to the commission, and (c) proof or evidence satisfactory to the commission that the nondelivered special fuel was actually returned to the refinery, processor, marine or pipeline terminal from which it was taken for the purpose of delivering it to a purchaser; and provided further, that immediately upon ascertainment by the refiner, processor, marine or pipeline terminal operator that said special fuel cannot be delivered, he or it shall immediately notify the commission of this fact and before moving his or its truck or other means of transporting such special fuel from the intended point of delivery; and should the commission desire to inspect such truck or other means of conveyance, such refiner, processor, marine or pipeline terminal operator shall arrange for such inspection at that point or at such other point that may be designated by the commission.

(6) In order to claim exemptions provided for under this article, the distributor of special fuel must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

SOURCES: Laws, 1999, ch. 461, § 14; Laws, 2007, ch. 504, § 1; Laws, 2013, ch. 411, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added (1)(m).

CHAPTER 59

Liquefied Compressed Gas Tax

ARTICLE 1.

GENERAL PROVISIONS.

§ 27-59-3. Definitions.

[Effective until July 1, 2015, this section will read:]

The words, terms and phrases as used in this chapter shall have the following meanings unless the context requires otherwise:

(a) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) "Highway" means and includes every way or place, of whatever nature, including public roads, toll roads, streets, and alleys of the state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair. Provided further, that the confines of a highway shall include the entire width and length of the right-of-way.

(c) "Motor vehicle" means every vehicle licensed for highway use by which any person or property is transported or drawn upon the highways of this state and which is self-propelled.

(d) "Liquefied compressed gas" means gases derived from petroleum or natural gas which are in the gaseous state at normal atmospheric temperature and pressure, but which may be maintained in the liquid state at normal atmospheric temperature by suitable pressure. As used herein, the term shall be deemed to mean and include methane, ethane, propane, ethylene, propylene, butylene, butane, isobutane, and any and all liquid flammable materials derived from petroleum or natural gas having a vapor pressure exceeding forty (40) pounds per square inch, absolute, at one hundred (100) degrees F. Normal storage of these gases is a liquid under pressure.

(e) "Compressed natural gas" and "liquefied natural gas" mean natural gas after it has been compressed or liquefied for use as a fuel in a motor vehicle and shall not include natural gas prior to such final compression or liquefication.

(f) "Compressed gas" means "liquefied compressed gas," "liquefied natural gas," "compressed natural gas" and any other liquefied or compressed gas that is used or is usable as fuel in a motor vehicle.

(g) "Use" means, in addition to its original meaning, the receipt of compressed gas by any person into the fuel supply tank of a motor vehicle or into a receptacle from which compressed gas is supplied by any person to his own or other motor vehicles.

(h) "Terminal" means a tank farm within this state with the minimum storage capacity for the receipt of a full barge delivery or common carrier pipeline delivery of compressed gas.

(i) "Refiner" or "processor" means every person who shall produce, manufacture, refine, distill, compress or liquefy compressed gas in this state.

(j) "Public utility" means a person engaged in the distribution of natural gas whose rates are subject to regulation by the Public Service Commission of the State of Mississippi.

(k) "Distributor" means any person who sells or delivers compressed gas for use in the operation of a motor vehicle or motor vehicles on the highways of this state and any person who shall import, receive, purchase, acquire, manufacture, refine, use, store or sell any compressed gas in this state, on which the excise taxes hereinafter levied by this chapter have not been paid or the payment of which is not covered by the bond of a qualified Mississippi distributor of compressed gas. All "refiners" and "processors" shall qualify as distributors of compressed gas. All persons operating marine or pipeline terminals and all persons operating underground storage facilities exclusive of those storing natural gas shall qualify as distributors of compressed gas. No person may qualify as a distributor for the sole purpose of using compressed gas as a fuel to propel a motor vehicle or motor vehicles owned by him on the highways of this state.

(*l*) "User" means any person who uses compressed gas to propel a motor vehicle over the highways of this state.

(m) "Commission" or "department" means the Department of Revenue of the State of Mississippi, either acting directly or through its duly authorized officers, agents and employees.

(n) "United States government" means and includes all purchasing officers of the Armed Forces of the United States and the United States Property and Fiscal Officer for the State of Mississippi or any other state, appointed pursuant to Section 708, Title 32, United States Code, when purchasing compressed gas with federal funds for the account of and use by a component of the Armed Forces as defined herein.

(o) "Armed Forces" means and includes all components of the Armed Forces of the United States, including the Army National Guard, the Army National Guard of the United States, the Air National Guard and the Air National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the Armed Forces of the United States enumerated in Section 261, Title 10, United States Code.

[Effective from and after July 1, 2015, this section will read:]

The words, terms and phrases as used in this chapter shall have the following meanings unless the context requires otherwise:

(a) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number unless the intention to give a more limited meaning is disclosed by the context.

(b) "Highway" means and includes every way or place, of whatever nature, including public roads, toll roads, streets, and alleys of the state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, and notwithstanding that they may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair. Provided further, that the confines of a highway shall include the entire width and length of the right-of-way.

(c) "Motor vehicle" means every vehicle licensed for highway use by which any person or property is transported or drawn upon the highways of this state and which is self-propelled.

(d) "Liquefied compressed gas" means gases derived from petroleum or natural gas which are in the gaseous state at normal atmospheric temperature and pressure, but which may be maintained in the liquid state at normal atmospheric temperature by suitable pressure. The term shall be deemed to mean and include methane, ethane, propane, ethylene, propylene, butylene, butane, isobutane, and any and all liquid flammable materials derived from petroleum or natural gas having a vapor pressure exceeding forty (40) pounds per square inch, absolute, at one hundred (100) degrees F. Normal storage of these gases is a liquid under pressure.

(e) "Compressed natural gas" and "liquefied natural gas" mean natural gas after it has been compressed or liquefied for use as a fuel in a motor vehicle and shall not include natural gas prior to such final compression or liquefication.

(f) "Compressed gas" means "liquefied compressed gas," "liquefied natural gas," "compressed natural gas" and any other liquefied or compressed gas that is used or is usable as fuel in a motor vehicle.

(g) "Use" means, in addition to its original meaning, the receipt of compressed gas by any person into the fuel supply tank of a motor vehicle or into a receptacle from which compressed gas is supplied by any person to his own or other motor vehicles.

(h) "Terminal" means a tank farm within this state with the minimum storage capacity for the receipt of a full barge delivery or common carrier pipeline delivery of compressed gas.

(i) "Refiner" or "processor" means every person who shall produce, manufacture, refine, distill, compress or liquefy compressed gas in this state.

(j) "Public utility" means a person engaged in the distribution of natural gas whose rates are subject to regulation by the Public Service Commission of the State of Mississippi.

(k) "Distributor" means any person who sells or delivers compressed gas for use in the operation of a motor vehicle or motor vehicles on the highways of this state and any person who shall import, receive, purchase, acquire, manufacture, refine, use, store or sell any compressed gas in this state, on which the excise taxes hereinafter levied by this chapter have not been paid or the payment of which is not covered by the bond of a qualified Mississippi distributor of compressed gas. All "refiners" and "processors" shall qualify as distributors of compressed gas. All persons operating marine or pipeline terminals and all persons operating underground storage facilities exclusive of those storing natural gas shall qualify as distributors of compressed gas. No person may qualify as a distributor for the sole purpose of using compressed gas as a fuel to propel a motor vehicle or motor vehicles owned by him on the highways of this state.

(*l*) "User" means any person who uses compressed gas to propel a motor vehicle over the highways of this state.

(m) "Commission" or "department" means the Department of Revenue of the State of Mississippi, either acting directly or through its duly authorized officers, agents and employees.

(n) "United States government" means and includes all purchasing officers of the Armed Forces of the United States and the United States Property and Fiscal Officer for the State of Mississippi or any other state, appointed pursuant to Section 708, Title 32, United States Code, when purchasing compressed gas with federal funds for the account of and use by a component of the Armed Forces as defined herein.

(o) "Armed Forces" means and includes all components of the Armed Forces of the United States, including the Army National Guard, the Army National Guard of the United States, the Air National Guard and the Air National Guard of the United States, as those terms are defined in Section 101, Title 10, United States Code, and any other reserve component of the Armed Forces of the United States enumerated in Section 261, Title 10, United States Code.

(p) "Diesel gallon equivalent" means six and six one-hundredths (6.06) pounds of liquefied natural gas. Provided, however, that should the National Conference on Weights and Measures subsequent to this act becoming law adopt a diesel gallon equivalent definition different than six and six one-hundredths (6.06) pounds of liquefied natural gas, the term "diesel gallon equivalent" shall mean and have the same definition as the National Conference on Weights and Measures definition.

SOURCES: Codes, 1942, § 10079-02; Laws, 1969 Ex Sess, ch. 55, § 2; Laws, 1982, ch. 410, § 4; Laws, 2009, ch. 492, § 97; Laws, 2014, ch. 467, § 1, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (p), by substituting "pounds of liquefied gas" for "pounds for liquefied gas." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Amendment Notes — The 2014 amendment (ch. 467), effective from and after July 1, 2015, in (b), substituted "and notwithstanding that they" for "and not withstanding that the same" in the first sentence; in (d), deleted "As used herein" from the beginning of the second sentence; and added (p).

§ 27-59-11. Levy of tax.

[Effective until July 1, 2015, this section will read:]

(1) A tax at the rate of One-fourth Cent (¼¢) per gallon is hereby levied upon any person engaged in business as a distributor of compressed gas, excepting natural gas, for the privilege of engaging in such business or acting as such distributor. The tax shall be based on all compressed gas, excepting natural gas, stored, used, distributed, manufactured, refined, distilled, blended or compounded in this state or received in this state for sale, storage, distribution or for any other purpose.

The tax levied herein shall become due and payable when:

(a) Compressed gas is withdrawn from storage at a refinery, marine or pipeline terminal, or underground caverns or cavities except when withdrawal is by pipeline or barge;

(b) Compressed gas imported by a common carrier is unloaded by that carrier unless the compressed gas is unloaded directly into an underground cavern or cavity for storage or directly into the storage tanks of a refinery, marine or pipeline terminal; or

(c) Compressed gas imported by any person, other than a common carrier, enters the State of Mississippi, unless the compressed gas is unloaded directly into an underground cavern or cavity for storage or directly into the storage tanks of a refinery, marine or pipeline terminal.

(2) A tax at the rate of Seventeen Cents (17¢) per gallon until the date specified in Section 65-39-35, and Thirteen and Four-tenths Cents (13.4¢) per gallon thereafter, is levied upon any distributor of compressed gas for the privilege of engaging in the business of selling or delivering compressed gas, excepting compressed natural gas and liquefied natural gas, for use in a motor vehicle or motor vehicles on the highways of this state. A tax at the rate of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, is levied upon any distributor of compressed gas for the privilege of engaging in the business of selling or delivering compressed natural gas and liquefied natural gas for use in a motor vehicle or motor vehicles on the highways of this state. A tax at the rate of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, is levied upon any public utility for the privilege of engaging in the business of selling or delivering natural gas to a user for the purpose of being used as a fuel in a motor vehicle or motor vehicles on the highways of this state, and the taxes shall be collected from the user whenever practical. The taxes levied in this subsection shall not apply when sales or deliveries are made to persons who are holders of permitted compressed gas user's decals.

(3) Upon every person operating on the highways of this state a motor vehicle or motor vehicles using or capable of using compressed gas as a motor fuel and having a gross license tag weight classification of ten thousand (10,000) pounds or less, there is hereby levied an annual privilege tax of One Hundred Ninety-five Dollars ($195.00) until the date specified in Section 65-39-35, and One Hundred Sixty-five Dollars ($165.00) thereafter.

(4) Upon every person operating on the highways of this state a motor vehicle or motor vehicles using or capable of using compressed gas and having a gross license tag weight classification greater than ten thousand (10,000) pounds, there is hereby levied a privilege tax of Seventeen Cents (17¢) per gallon until the date specified in Section 65-39-35, and Thirteen and Four-tenths Cents (13.4¢) per gallon thereafter, on all compressed gas, excepting compressed natural gas and liquefied natural gas, used on the highways of this state. There is hereby levied a privilege tax of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, on all compressed natural gas and liquefied natural gas used on the highways of this state. The taxes levied in this paragraph shall not apply to owners or operators classified by the commission as nonpermitted users.

(5) All owners and operators of motor vehicles that have a gross license tag weight classification greater than ten thousand (10,000) pounds, but not exceeding twenty thousand (20,000) pounds shall prepay Two Hundred Twenty-five Dollars ($225.00) of such tax annually, and all owners and operators of motor vehicles that have a gross license tag weight classification greater than twenty thousand (20,000) pounds shall prepay Three Hundred Dollars ($300.00) of such tax annually. On motor vehicles that have a gross license tag weight exceeding ten thousand (10,000) pounds, that are exclusively used by a farmer for transporting farm products produced on his own farm and also farm supplies, materials and equipment used in the growing or production of his agricultural products and have a "farm" or "F" motor vehicle license tag, the prepaid portion of said privilege tax shall be One Hundred Fifty Dollars ($150.00).

(6) The commission, in its discretion, may authorize or require the owner or operator of five (5) or more motor vehicles that use or are capable of using compressed gas on the highway to pay the excise tax on all compressed gas purchased for any purpose and the excise tax shall be collected by the distributor of compressed gas at the time of sale or delivery. The owners or operators authorized or required to do so shall be classified as nonpermitted users.

[Effective from and after July 1, 2015, this section will read:]

(1) A tax at the rate of One-fourth Cent (¼¢) per gallon is hereby levied upon any person engaged in business as a distributor of compressed gas, excepting natural gas, for the privilege of engaging in such business or acting as such distributor. The tax shall be based on all compressed gas, excepting natural gas, stored, used, distributed, manufactured, refined, distilled,

blended or compounded in this state or received in this state for sale, storage, distribution or for any other purpose.

The tax levied herein shall become due and payable when:

(a) Compressed gas is withdrawn from storage at a refinery, marine or pipeline terminal, or underground caverns or cavities except when withdrawal is by pipeline or barge;

(b) Compressed gas imported by a common carrier is unloaded by that carrier unless the compressed gas is unloaded directly into an underground cavern or cavity for storage or directly into the storage tanks of a refinery, marine or pipeline terminal; or

(c) Compressed gas imported by any person, other than a common carrier, enters the State of Mississippi, unless the compressed gas is unloaded directly into an underground cavern or cavity for storage or directly into the storage tanks of a refinery, marine or pipeline terminal.

(2)(a) A tax at the rate of Seventeen Cents (17¢) per gallon until the date specified in Section 65-39-35, and Thirteen and Four-tenths Cents (13.4¢) per gallon thereafter, is levied upon any distributor of compressed gas for the privilege of engaging in the business of selling or delivering compressed gas, excepting compressed natural gas and liquefied natural gas, for use in a motor vehicle or motor vehicles on the highways of this state.

(b) A tax at the rate of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, is levied upon any distributor of compressed gas for the privilege of engaging in the business of selling or delivering compressed natural gas for use in a motor vehicle or motor vehicles on the highways of this state.

(c) A tax at the rate of Eighteen Cents (18¢) per diesel gallon equivalent until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per diesel gallon equivalent thereafter, is levied upon any distributor of liquefied natural gas for the privilege of engaging in the business of selling or delivering liquefied natural gas for use in a motor vehicle or motor vehicles on the highways of this state.

(d) A tax at the rate of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, is levied upon any public utility for the privilege of engaging in the business of selling or delivering natural gas to a user for the purpose of being used as a fuel in a motor vehicle or motor vehicles on the highways of this state, and the taxes shall be collected from the user whenever practical.

(e) The taxes levied in this subsection shall not apply when sales or deliveries are made to persons who are holders of permitted compressed gas user's decals.

(3) Upon every person operating on the highways of this state a motor vehicle or motor vehicles using or capable of using any compressed gas, except liquefied natural gas, as a motor fuel and having a gross license tag weight classification of ten thousand (10,000) pounds or less, there is hereby levied an

annual privilege tax of One Hundred Ninety-five Dollars ($195.00) until the date specified in Section 65-39-35, and One Hundred Sixty-five Dollars ($165.00) thereafter.

(4)(a) Upon every person operating on the highways of this state a motor vehicle or motor vehicles using or capable of using compressed gas and having a gross license tag weight classification greater than ten thousand (10,000) pounds, there is hereby levied:

(i) A privilege tax of Seventeen Cents (17¢) per gallon until the date specified in Section 65-39-35, and Thirteen and Four-tenths Cents (13.4¢) per gallon thereafter, on all compressed gas, excepting compressed natural gas and liquefied natural gas, used on the highways of this state;

(ii) A privilege tax of Eighteen Cents (18¢) per one hundred (100) cubic feet until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per one hundred (100) cubic feet thereafter, on all compressed natural gas used on the highways of this state; and

(iii) A privilege tax of Eighteen Cents (18¢) per diesel gallon equivalent until the date specified in Section 65-39-35, and Fourteen and Four-tenths Cents (14.4¢) per diesel gallon equivalent thereafter, on all liquefied natural gas used on the highways of this state.

(b) The taxes levied in this subsection shall not apply to owners or operators classified by the department as nonpermitted users.

(5) All owners and operators of motor vehicles that have a gross license tag weight classification greater than ten thousand (10,000) pounds, but not exceeding twenty thousand (20,000) pounds shall prepay Two Hundred Twenty-five Dollars ($225.00) of the tax annually, and all owners and operators of motor vehicles that have a gross license tag weight classification greater than twenty thousand (20,000) pounds shall prepay Three Hundred Dollars ($300.00) of the tax annually. On motor vehicles that have a gross license tag weight exceeding ten thousand (10,000) pounds, that are exclusively used by a farmer for transporting farm products produced on his own farm and also farm supplies, materials and equipment used in the growing or production of his agricultural products and have a "farm" or "F" motor vehicle license tag, the prepaid portion of the privilege tax shall be One Hundred Fifty Dollars ($150.00).

(6) The department, in its discretion, may authorize or require the owner or operator of five (5) or more motor vehicles that use or are capable of using compressed gas on the highway to pay the excise tax on all compressed gas purchased for any purpose and the excise tax shall be collected by the distributor of compressed gas at the time of sale or delivery. The owners or operators authorized or required to do so shall be classified as nonpermitted users.

SOURCES: Codes, 1942, § 10079-06; Laws, 1969 Ex Sess, ch. 55, § 6; Laws, 1981, ch. 468, § 56; Laws, 1982, ch. 410, § 7; Laws, 1984, ch. 427, § 1; Laws, 1987, ch. 322, § 16; Laws, 1994, ch. 518, § 1; Laws, 1994, ch. 557, § 21; Laws, 2014, ch. 467, § 2, eff from and after July 1, 2015.

Amendment Notes — The 2014 amendment (ch. 467), effective July 1, 2015, added the (2)(a), (b), (d) and (e) designations and added (2)(c); in (2)(b), deleted "and liquefied natural gas" following "delivering compressed natural gas" near the end; in (3), substituted "any compressed gas, except liquefied natural gas," for "compressed gas"; in (4), added the (a) and (b) designations; in (4)(a), inserted the (i) and (ii) designations and added (iii); and made related changes; in (4)(a)(ii), deleted "and liquefied natural gas" preceding "used on the highways of this state"; in (4)(b), substituted "subsection" for "paragraph" and "department" for "commission"; in (6), substituted "department" for "commission"; and made minor stylistic changes.

§ 27-59-29. Compressed gas user's decal for motor vehicles; fee; classifications.

[Effective until July 1, 2015, this section will read:]

Any person operating a motor vehicle or motor vehicles of any type on the highways of the State of Mississippi that use or are capable of using compressed gas as a motor fuel shall, before operating such motor vehicle or motor vehicles, obtain from the commission a compressed gas user's decal.

The owner or operator of such motor vehicle or motor vehicles shall no later than fifteen (15) days after the installation of the compressed gas carburetion equipment or the acquisition of such motor vehicle or motor vehicles, file with the commission an application for a compressed gas user's decal for each vehicle. Such application shall be made on forms prescribed by the commission and shall contain such information as the commission may deem reasonably necessary for administration of this chapter.

No motor vehicle privilege license tag and decal shall be issued by the county tax collector to the operator of a motor vehicle that uses or is capable of using compressed gas on the highways of this state unless an application for a compressed gas user's decal has been filed or the motor vehicle bears a current compressed gas user's decal. The county tax collector shall require an application and the annual privilege tax required by this chapter from each applicant for a motor vehicle privilege license tag and decals, whether the tag and decals are to be issued by the tax collector or by the commission. If said applicant has obtained the approval of the commission to operate as a "nonpermitted user," then the prepayment of taxes is not required; however, an application for a decal must be made. The county tax collector shall forward the application and fee to the commission within fifteen (15) days from the date received by him, and the county tax collector shall be entitled to retain One Dollar ($1.00) for each application and fee received by him and forwarded to the commission. Said fee shall be forfeited by the county tax collector if he fails to forward any application and remittance within fifteen (15) days of receipt by him. Every person engaged in business as a dealer of compressed gas carburetion equipment or in the business of installing such equipment shall, at the time of installation, collect the compressed gas user's annual privilege tax. If the operator of said motor vehicle has obtained the approval of the commission to operate as a nonpermitted user, then the prepayment of taxes is not required; however, an application for a decal must be made. The dealer or installer shall forward any application and remittance to the commission

within fifteen (15) days of receipt by him. The dealer and installer shall be subject to the same requirements and penalties as a distributor of compressed gas.

No automobile or truck dealer shall operate any motor vehicle, for demonstration purposes bearing a Mississippi motor vehicle dealer tag, that uses or is capable of using compressed gas on the highways of this state, unless said dealer has paid the annual privilege tax applicable to each vehicle and secured from the commission a certificate of authority to operate the motor vehicle or motor vehicles on the highways of this state for demonstration purposes only. No dealer may receive or use a certificate of authority for the operation of any motor vehicle that does not bear a Mississippi dealer tag.

Motor vehicles using or capable of using compressed gas as a motor fuel and:

(a) Having a gross license tag weight classification of ten thousand (10,000) pounds or less shall be designated "Class I" motor vehicles;

(b) Having a gross license tag weight classification of ten thousand (10,000) pounds but not exceeding twenty thousand (20,000) pounds shall be designated "Class II" motor vehicles;

(c) Having a gross license tag weight classification greater than twenty thousand (20,000) pounds shall be designated "Class III" motor vehicles; and

(d) Owned or operated by nonpermitted users shall be designated "Class IV" motor vehicles.

The commission shall provide for the issuance of decals for each of the aforesaid user's classifications and such decals shall be in such form and size as the commission may prescribe. Such decals shall be displayed on the motor vehicle at all times and in a manner prescribed by the commission.

The decals shall expire at the same time as the motor vehicle privilege license tag expires and shall be valid for one (1) year; provided, however, that when a motor vehicle is converted to compressed gas in a month other than when the license tag is purchased or renewed, then the pro rata portion of the annual privilege tax shall be due on the number of months until the motor vehicle privilege license tag expires. Provided further, that when a motor vehicle equipped with a compressed gas carburetion system is acquired or a motor vehicle is converted to compressed gas, the compressed gas decal year shall begin with the month following the month in which the motor vehicle is acquired or converted.

[Effective from and after July 1, 2015, this section will read:]

(1) Any person operating a motor vehicle or motor vehicles of any type on the highways of the State of Mississippi that use or are capable of using any compressed gas, except liquefied natural gas, as a motor fuel shall, before operating such motor vehicle or motor vehicles, obtain from the department a compressed gas user's decal.

(2) The owner or operator of a motor vehicle or motor vehicles described in subsection (1) of this section shall file with the department an application for a compressed gas user's decal for each vehicle not later than fifteen (15) days

after the installation of the compressed gas carburetion equipment or the acquisition of the motor vehicle or motor vehicles. The application shall be made on forms prescribed by the department and shall contain such information as the department may deem reasonably necessary for administration of this chapter.

(3) No motor vehicle privilege license tag and decal shall be issued by the county tax collector to the operator of a motor vehicle that uses or is capable of using compressed gas on the highways of this state unless an application for a compressed gas user's decal has been filed or the motor vehicle bears a current compressed gas user's decal. The county tax collector shall require an application and the annual privilege tax required by this chapter from each applicant for a motor vehicle privilege license tag and decals, whether the tag and decals are to be issued by the tax collector or by the department. If the applicant has obtained the approval of the department to operate as a "nonpermitted user," then the prepayment of taxes is not required; however, an application for a decal must be made. The county tax collector shall forward the application and fee to the department within fifteen (15) days from the date it is received by him, and the county tax collector shall be entitled to retain One Dollar ($1.00) for each application and fee received by him and forwarded to the department. The fee shall be forfeited by the county tax collector if he fails to forward any application and remittance within fifteen (15) days of receipt by him. Every person engaged in business as a dealer of compressed gas carburetion equipment or in the business of installing compressed gas carburetion equipment shall, at the time of installation, collect the compressed gas user's annual privilege tax. If the operator of the motor vehicle has obtained the approval of the department to operate as a nonpermitted user, then the prepayment of taxes is not required; however, an application for a decal must be made. The dealer or installer shall forward any application and remittance to the department within fifteen (15) days of receipt by him. The dealer and installer shall be subject to the same requirements and penalties as a distributor of compressed gas. This subsection shall not apply to a motor vehicle that uses liquefied natural gas and no other compressed gas.

(4) No automobile or truck dealer shall operate any motor vehicle, for demonstration purposes bearing a Mississippi motor vehicle dealer tag, that uses or is capable of using compressed gas on the highways of this state, unless said dealer has paid the annual privilege tax applicable to each vehicle and secured from the department a certificate of authority to operate the motor vehicle or motor vehicles on the highways of this state for demonstration purposes only. No dealer may receive or use a certificate of authority for the operation of any motor vehicle that does not bear a Mississippi dealer tag.

(5) Motor vehicles using or capable of using compressed gas as a motor fuel and:

(a) Having a gross license tag weight classification of ten thousand (10,000) pounds or less shall be designated "Class I" motor vehicles;

(b) Having a gross license tag weight classification of ten thousand (10,000) pounds but not exceeding twenty thousand (20,000) pounds shall be designated "Class II" motor vehicles;

(c) Having a gross license tag weight classification greater than twenty thousand (20,000) pounds shall be designated "Class III" motor vehicles; and

(d) Owned or operated by nonpermitted users shall be designated "Class IV" motor vehicles.

(6) The department shall provide for the issuance of the decals required to be issued by this section for each of the user's classifications described in subsection (5) of this section and the decals shall be in a form and size as the department may prescribe. The decals shall be displayed on the motor vehicle at all times and in a manner prescribed by the department.

(7) The decals issued under this section shall expire at the same time as the motor vehicle privilege license tag expires and shall be valid for one (1) year; however, when a motor vehicle is converted to a compressed gas other than liquefied natural gas in a month other than when the license tag is purchased or renewed, then the pro rata portion of the annual privilege tax shall be due on the number of months until the motor vehicle privilege license tag expires. Provided further, that when a motor vehicle equipped with a compressed gas carburetion system is acquired or a motor vehicle is converted to a compressed gas other than liquefied natural gas, the compressed gas decal year shall begin with the month following the month in which the motor vehicle is acquired or converted.

SOURCES: Codes, 1942, § 10079-15; Laws, 1969 Ex Sess, ch. 55, § 15; Laws, 1976, ch. 361, § 19; Laws, 1978, ch. 374, § 1; Laws, 1981, ch. 468, § 59; Laws, 1982, ch. 410, § 12; Laws, 1991, ch. 384, § 5; Laws, 2014, ch. 467, § 3, eff from and after July 1, 2015.

Amendment Notes — The 2014 amendment rewrote the section, effective from and after July 1, 2015, to exempt motor vehicles that use liquefied natural gas and no other compressed gas from the requirement of obtaining a decal from the Department of Revenue.

CHAPTER 61

Interstate Commercial Carriers Motor Fuel Tax

SEC.

§ 27-61-31. Administration and enforcement; interest on late payments; penalties.

[Effective until October 1, 2014, this section will read:]

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in said

Sales Tax Law, except that in cases of conflict, then the provisions of this chapter shall control.

Interest at the rate of one percent (1%) per month, or fraction thereof, may be assessed for the late payment or nonpayment of taxes under this chapter. A penalty of Fifty Dollars ($ 50.00) or ten percent (10%) of the tax due, whichever is greater, may be assessed for the failure to file a report, the late payment of taxes or the failure to pay taxes.

[Effective from and after October 1, 2014, this section will read:]

(1) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns and for other noncompliance with the provisions of the sales tax law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter, and the department shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in the sales tax law, except that in cases of conflict, then the provisions of this chapter shall control.

(2) Interest at the rate provided for in the International Fuel Tax Agreement may be assessed for the late payment or nonpayment of taxes under this chapter. A penalty of Fifty Dollars ($50.00) or ten percent (10%) of the tax due, whichever is greater, may be assessed for the failure to file a report, the late payment of taxes or the failure to pay taxes.

SOURCES: Laws, 2001, ch. 311, § 6; Laws, 2014, ch. 335, § 1, eff from and after Oct. 1, 2014.

Amendment Notes — The 2014 amendment, effective from and after October 1, 2014, inserted subsection (1) and (2) designations; substituted "the sales tax law" for "said law," "department" for "commission" and "the sales tax law" for "said Sales Tax Law" in (1); substituted "provided for in the International Fuel Tax Agreement" for "of one percent (1%) per month, or fraction thereof" in the first sentence of (2).

CHAPTER 65

Sales Tax

IN GENERAL

§ 27-65-3. Definitions.

The words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them herein.

(a) "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Person" means and includes any individual, firm, copartnership, joint venture, association, corporation, promoter of a temporary event, estate, trust or other group or combination acting as a unit, and includes the plural as well as the singular in number. "Person" shall include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder. "Person" shall also include any state, county, municipal or other agency or association engaging in a business taxable under this chapter.

(d) "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year.

(e) "Taxpayer" means any person liable for or having paid any tax to the State of Mississippi under the provisions of this chapter. A taxpayer is required to obtain a sales tax permit under Section 27-65-27 before engaging in business in this state. If a taxpayer fails to obtain a sales tax permit before engaging in business in this state, the taxpayer shall pay the retail rate on all purchases of tangible personal property and/or services in this state, even if purchased for resale. Upon obtaining a sales tax permit, a previously unregistered taxpayer shall file sales tax returns for all tax periods during which he engaged in business in this state without a sales tax permit, and report and pay the sales tax accruing from his operation during this period and any applicable penalties and interest. On such return, the taxpayer may

take a credit for any sales taxes paid during the period he operated without a sales tax permit on a purchase that would have constituted a wholesale sale if the taxpayer had a sales tax permit at the time of the purchase and if proper documentation exists to substantiate a wholesale sale. This credit may also be allowed in any audit of the taxpayer. Any penalties and interest owed by the taxpayer on the return or in an audit for a period during which he operated without a sales tax permit may be determined based on the sales tax accruing from the taxpayer's operation for that period after the taking of this credit.

(f) "Sale" or "sales" includes the barter or exchange of property as well as the sale thereof for money or other consideration, and every closed transaction by which the title to taxable property passes shall constitute a taxable event.

"Sale" shall also include the passing of title to property for a consideration of coupons, trading stamps or by any other means when redemption is subsequent to the original sale by which the coupon, stamp or other obligation was created.

The situs of a sale for the purpose of distributing taxes to municipalities shall be the same as the location of the business from which the sale is made except that:

(i) Retail sales along a route from a vehicle or otherwise by a transient vendor shall take the situs of delivery to the customer.

(ii) The situs of wholesale sales of tangible personal property taxed at wholesale rates, the amount of which is allowed as a credit against the sales tax liability of the retailer, shall be the same as the location of the business of the retailer receiving the credit.

(iii) The situs of wholesale sales of tangible personal property taxed at wholesale rates, the amount of which is not allowed as a credit against the sales tax liability of the retailer, shall have a rural situs.

(iv) Income received from the renting or leasing of property used for transportation purposes between cities or counties shall have a rural situs.

(g) "Delivery charges" shall mean and include any expenses incurred by a seller in acquiring merchandise for sale in the regular course of business commonly known as "freight-in" or "transportation costs-in." "Delivery charges" also include any charges made by the seller for delivery of property sold to the purchaser.

(h) "Gross proceeds of sales" means the value proceeding or accruing from the full sale price of tangible personal property, including installation charges, without any deduction for delivery charges, cost of property sold, other expenses or losses, or taxes of any kind except those expressly exempt by this chapter.

"Gross proceeds of sales" includes consideration received by the seller from third parties if:

(i) The seller actually received consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One (1) of the following criteria is met:

1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

2. The purchaser identified himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

3. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

Where a trade-in is taken as part payment on tangible personal property sold, "gross proceeds of sales" shall include only the difference received between the selling price of the tangible personal property and the amount allowed for a trade-in of property of the same kind. When the trade-in is subsequently sold, the selling price thereof shall be included in "gross proceeds of sales."

"Gross proceeds of sales" shall include the value of any goods, wares, merchandise or property purchased at wholesale or manufactured, and any mineral or natural resources produced, which are withdrawn or used from an established business or from the stock in trade for consumption or any other use in the business or by the owner. However, "gross proceeds of sales" does not include meals prepared by a restaurant and provided at no charge to employees of the restaurant or donated to a charitable organization that regularly provides food to the needy and the indigent and which has been granted exemption from the federal income tax as an organization described in Section 501(c) (3) of the Internal Revenue Code of 1986.

"Gross proceeds of sales" shall not include bad check or draft service charges as provided for in Section 97-19-57.

"Gross proceeds of sales" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

(i) "Gross income" means the total charges for service or the total receipts (actual or accrued) derived from trades, business or commerce by reason of the investment of capital in the business engaged in, including the sale or rental of tangible personal property, compensation for labor and services performed, and including the receipts from the sales of property

retained as toll, without any deduction for rebates, cost of property sold, cost of materials used, labor costs, interest paid, losses or any expense whatever.

"Gross income" shall also include the cost of property given as compensation when the property is consumed by a person performing a taxable service for the donor.

However, "gross income" or "gross proceeds of sales" shall not be construed to include the value of goods returned by customers when the total sale price is refunded either in cash or by credit, or cash discounts allowed and taken on sales. Cash discounts shall not include the value of trading stamps given with a sale of property.

(j) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis as opposed to real property or intangibles and shall include property sold on an installed basis which may become a part of real or personal property.

(k) "Installation charges" shall mean and include the charge for the application of tangible personal property to real or personal property without regard to whether or not it becomes a part of the real property or retains its personal property classification. It shall include, but not be limited to, sales in place of roofing, tile, glass, carpets, drapes, fences, awnings, window air-conditioning units, gasoline pumps, window guards, floor coverings, carports, store fixtures, aluminum and plastic siding, tombstones and similar personal property.

(*l*) "Newspaper" means a periodical which:

(i) Is not published primarily for advertising purposes and has not contained more than seventy-five percent (75%) advertising in more than one-half (½) of its issues during any consecutive twelve-month period excluding separate advertising supplements inserted into but separately identifiable from any regular issue or issues;

(ii) Has been established and published continuously for at least twelve (12) months;

(iii) Is regularly issued at stated intervals no less frequently than once a week, bears a date of issue, and is numbered consecutively; provided, however, that publication on legal holidays of this state or of the United States and on Saturdays and Sundays shall not be required, and failure to publish not more than two (2) regular issues in any calendar year shall not exclude a periodical from this definition;

(iv) Is issued from a known office of publication, which shall be the principal public business office of the newspaper and need not be the place at which the periodical is printed and a newspaper shall be deemed to be "published" at the place where its known office of publication is located;

(v) Is formed of printed sheets; provided, however, that a periodical that is reproduced by the stencil, mimeograph or hectograph process shall not be considered to be a "newspaper"; and

(vi) Is originated and published for the dissemination of current news and intelligence of varied, broad and general public interest, announcements and notices, opinions as editorials on a regular or irregular basis, and advertising and miscellaneous reading matter.

The term "newspaper" shall include periodicals which are designed primarily for free circulation or for circulation at nominal rates as well as those which are designed for circulation at more than a nominal rate.

The term "newspaper" shall not include a publication or periodical which is published, sponsored by, is directly supported financially by, or is published to further the interests of, or is directed to, or has a circulation restricted, in whole or in part, to any particular sect, denomination, labor or fraternal organization or other special group or class or citizens.

For purposes of this paragraph, a periodical designed primarily for free circulation or circulation at nominal rates shall not be considered to be a newspaper unless such periodical has made an application for such status to the department in the manner prescribed by the department and has provided to the department documentation satisfactory to the department showing that such periodical meets the requirements of the definition of the term "newspaper." However, if such periodical has been determined to be a newspaper under action taken by the department on or before April 11, 1996, such periodical shall be considered to be a newspaper without the necessity of applying for such status. A determination by the Department of Revenue that a publication is a newspaper shall be limited to the application of this chapter and shall not establish that the publication is a newspaper for any other purpose.

(m) "MPC" or "Material Purchase Certificate" means a certificate for which a person that is liable for the tax levy under Section 27-65-21 can apply and obtain from the commissioner, and when issued, entitles the holder to purchase materials and services that are to become a component part of a structure to be erected or repaired with no tax due. Any person taxable under Section 27-65-21 who obtains an MPC for a project and purchases materials and services in this state that are to become a component part of a structure being erected or repaired in the project and at any time pays sales tax on these purchases may, after obtaining the MPC for the project, take a credit against his sales taxes for the sales tax paid on these purchases if proper documentation exists to substantiate the payment of the sales tax on the purchase of component materials and services. This credit may also be allowed in any audit of the taxpayer. Any penalties and interest owed by the taxpayer on the return or in the audit where this credit is taken may be determined based on the sales tax due after the taking of this credit.

SOURCES: Codes, 1942, § 10104; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1944, ch. 129, § 1; Laws, 1946, ch. 262, § 1; Laws, 1948, ch. 467, § 1; Laws, 1950, ch. 530, § 1; Laws, 1954, ch. 369, § 2; Laws, 1955, Ex Sess, ch. 109, § 2; Laws, 1956, ch. 419, § 1; Laws, 1958, ch. 574, § 1; Laws, 1968, ch. 588, § 1; Laws, 1970, ch. 546, § 1; Laws, 1972, ch. 506, § 1; Laws, 1982, 1st Ex. Sess, ch. 17, § 32; brought forward, Laws, 1983, ch. 546, § 4; Laws, 1986, ch. 451, § 1; Laws, 1995, ch. 508, § 1; Laws, 1996, ch. 523, § 1; Laws, 1997, ch. 493, § 1; Laws, 2005, ch. 325, § 1; Laws, 2006, ch. 478, § 1; Laws, 2008, ch. 472, § 1; Laws, 2009, ch. 492, § 102; Laws, 2014, ch. 472, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 472, § 4, effective July 1, 2014, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws or use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2014 amendment, in (h), deleted "carrying charges, or any other addition to the selling price on account of deferred payments by the purchaser," following "including installation charges" in the first paragraph and added the last paragraph.

§ 27-65-11. Definitions; "Manufacturer"; "Manufacturing"; "Remanufacturing"; "Custom"; "Repairs"; "Producer."

(a) "Manufacturer" means one who is exclusively or predominately engaged in the business of manufacturing as defined under the terms "to manufacture" or "manufacturing." A person who is engaged in manufacturing and nonmanufacturing activities may be classified as a manufacturer as to his manufacturing activities which are operated as a separate business or division.

(b) "To manufacture" or "manufacturing" embraces activities of an industrial or commercial nature wherein labor or skill is applied, by hand or machinery, to materials belonging to the manufacturer so that a new, different, or more useful article of tangible personal property or substance of trade or commerce or electric power is produced for sale or rental and includes the production or fabrication of special-made or custom-made articles for sale or rental. Activities of scrap metal recyclers that primarily convert material into a more useful product such as a specification-grade commodity, by processing the metal into separate types, removing waste material, and/or cutting, chipping, sorting, sizing or shaping the material into a usable product for sale such as a specification-grade commodity, shall be included in the terms "to manufacture" and "manufacturing."

"To manufacture" or "manufacturing" does not include activities such as cooking or preparing food or food products by a retailer in the regular course of retail trade; repairing and reconditioning property; the filling of prescriptions by a pharmacist; the washing or screening of mineral products; the cutting, hauling and decking of logs; or similar preparatory functions even when performed by a manufacturer. Activities of scrap metal recyclers that involve the gathering of recycled material and flattening, sorting, bundling or performing some other similar function solely to allow ease of transportation or storage and not to produce specification-grade commodities and/or the removal of parts for resale, shall not be included in the terms "to manufacture" and "manufacturing."

(c) "Remanufacturing" embraces activities of an industrial or commercial nature wherein labor or skill is applied by hand or machinery to materials, a

portion of which may belong to the customer, so that rebuilt articles of tangible personal property, comparable in quality to new articles of the same property, are created, a majority of the value of which is produced by the remanufacturing activity.

(d) "Custom processor" means one who is exclusively or predominately engaged in the business of custom processing or remanufacturing as defined under the terms "custom processing" and "remanufacturing."

(e) "Custom processing" means the performance of a manufacturing service done or made to order upon the property of the customer and shall include laundering, cleaning and pressing, but shall not include "repairs" or "maintenance" as these terms are defined herein; nor self-service commercial laundering, drying, cleaning and pressing equipment.

(f) "Manufacturing machinery" shall mean and include that machinery owned or leased by a manufacturer or custom processor for use by said manufacturer or custom processor in his plant directly and exclusively in manufacturing tangible personal property for subsequent sale, rental or in custom processing for a fee. Motorized units, conveyors, track and track structures, conduits, and similar items for use in transporting the unfinished product from storage or from one phase of the manufacturing process to another may be classed as "manufacturing machinery."

"Manufacturing machinery" shall also include laboratory machinery which shall include X-ray machines and film, scales, chemical equipment, pressure and tensile analysis machines and similar equipment to determine the quality of the product in process of manufacture, and equipment used in the processing of waste materials to avoid air and water pollution, but only when located at the manufacturer's plant site.

Machinery used by a manufacturer to move, repair, clean, alter, improve, or otherwise recondition, rail rolling stock for sale or rental shall likewise constitute "manufacturing machinery."

"Manufacturing machinery" shall also include machinery and equipment used in the production of motion pictures such as editing equipment, audio equipment, lighting equipment, projection equipment, camera equipment, sound equipment, cables, computer equipment used in the editing process, computer equipment used in the creation of special effects, and computer equipment used in the graphic and animation process. For the purposes of this paragraph the term "motion picture" means a nationally distributed feature-length film, video, television series or commercial made in Mississippi, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include the production of television coverage of news and athletic events, or a film, video, television series or commercial that contains any material or performance defined in Section 97-29-103. Manufacturing machinery used in the production of motion pictures shall not be limited to a plant site.

"Manufacturing machinery" shall not include machinery for use in the hatching of baby chicks, the severance of timber, sand, gravel, oil, gas or other natural resources produced or severed from the soil or water, maintenance or

repair machinery, research laboratory machinery, storage warehouse machinery, equipment for protection of the plant or comfort of the personnel, or other equipment and supplies of like character. "Manufacturing machinery" does not include machine foundations or materials for their construction.

(g) "Machine parts" are component parts of manufacturing machinery and do not include parts for service equipment, nonmanufacturing machinery, fuels, lubricants, paints, or tools for maintenance.

(h) "Manufacturing plant" means the real and personal property owned or leased by a manufacturer which is assembled and used at a fixed location to perform activities defined as "manufacturing."

(i) "Repair," "repairs," or "maintenance" means the restoring of property in some measure to its original condition, which may involve the use of either personal property or labor or both, but, for the purposes of this chapter, the total charge for the service shall constitute gross income taxable in the class in which it falls.

(j) "Producer" means any person producing natural resource products or agricultural or horticultural products from the soil or water for sale.

SOURCES: Codes, 1942, § 10104-04; Laws, 1954, ch. 369, § 6; Laws, 1955, Ex Sess, ch. 109, § 6; Laws, 1958, ch. 574, § 5; Laws, 1965, ch. 22, § 1; Laws, 1978, ch. 532, § 1; Laws, 1980, ch. 501, § 2; Laws, 1981, ch. 328, § 1; Laws, 1985, ch. 516, § 1; Laws, 2004, ch. 528, § 5; Laws, 2013, ch. 469, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment added the last sentence in the first and second paragraphs of (b).

§ 27-65-17. Selling tangible personal property wholesale and retail.

(1)(a) Except as otherwise provided in this section, upon every person engaging or continuing within this state in the business of selling any tangible personal property whatsoever there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross proceeds of the retail sales of the business.

(b) Retail sales of farm tractors and parts and labor used to maintain and/or repair such tractors shall be taxed at the rate of one and one-half percent (1-½%) when made to farmers for agricultural purposes.

(c)(i) Retail sales of farm implements sold to farmers and used directly in the production of poultry, ratite, domesticated fish as defined in Section 69-7-501, livestock, livestock products, agricultural crops or ornamental plant crops or used for other agricultural purposes, and parts and labor used to maintain and/or repair such implements, shall be taxed at the rate of one and one-half percent (1-½%) when used on the farm.

(ii) The one and one-half percent (1-½%) rate shall also apply to all equipment used in logging, pulpwood operations or tree farming, and parts and labor used to maintain and/or repair such equipment, which is either:

1. Self-propelled, or

2. Mounted so that it is permanently attached to other equipment which is self-propelled or permanently attached to other equipment drawn by a vehicle which is self-propelled.

In order to be eligible for the rate of tax provided for in this subparagraph (ii), such sales must be made to a professional logger. For the purposes of this subparagraph (ii), a "professional logger" is a person, corporation, limited liability company or other entity, or an agent thereof, who possesses a professional logger's permit issued by the Department of Revenue and who presents the permit to the seller at the time of purchase. The department shall establish an application process for a professional logger's permit to be issued, which shall include a requirement that the applicant submit a copy of documentation verifying that the applicant is certified according to Sustainable Forestry Initiative guidelines. Upon a determination that an applicant is a professional logger, the department shall issue the applicant a numbered professional logger's permit.

(d) Except as otherwise provided in subsection (3) of this section, retail sales of aircraft, automobiles, trucks, truck-tractors, semitrailers and manufactured or mobile homes shall be taxed at the rate of three percent (3%).

(e) Sales of manufacturing machinery or manufacturing machine parts when made to a manufacturer or custom processor for plant use only when the machinery and machine parts will be used exclusively and directly within this state in manufacturing a commodity for sale, rental or in processing for a fee shall be taxed at the rate of one and one-half percent (1-½%).

(f) Sales of machinery and machine parts when made to a technology intensive enterprise for plant use only when the machinery and machine parts will be used exclusively and directly within this state for industrial purposes, including, but not limited to, manufacturing or research and development activities, shall be taxed at the rate of one and one-half percent (1-½%). In order to be considered a technology intensive enterprise for purposes of this paragraph:

(i) The enterprise shall meet minimum criteria established by the Mississippi Development Authority;

(ii) The enterprise shall employ at least ten (10) persons in full-time jobs;

(iii) At least ten percent (10%) of the workforce in the facility operated by the enterprise shall be scientists, engineers or computer specialists;

(iv) The enterprise shall manufacture plastics, chemicals, automobiles, aircraft, computers or electronics; or shall be a research and development facility, a computer design or related facility, or a software publishing facility or other technology intensive facility or enterprise as determined by the Mississippi Development Authority;

(v) The average wage of all workers employed by the enterprise at the facility shall be at least one hundred fifty percent (150%) of the state average annual wage; and

(vi) The enterprise must provide a basic health care plan to all employees at the facility.

(g) Sales of materials for use in track and track structures to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission shall be taxed at the rate of three percent (3%).

(h) Sales of tangible personal property to electric power associations for use in the ordinary and necessary operation of their generating or distribution systems shall be taxed at the rate of one percent (1%).

(i) Wholesale sales of beer shall be taxed at the rate of seven percent (7%), and the retailer shall file a return and compute the retail tax on retail sales but may take credit for the amount of the tax paid to the wholesaler on said return covering the subsequent sales of same property, provided adequate invoices and records are maintained to substantiate the credit.

(j) Wholesale sales of food and drink for human consumption to full-service vending machine operators to be sold through vending machines located apart from and not connected with other taxable businesses shall be taxed at the rate of eight percent (8%).

(k) Sales of equipment used or designed for the purpose of assisting disabled persons, such as wheelchair equipment and lifts, that is mounted or attached to or installed on a private carrier of passengers or light carrier of property, as defined in Section 27-51-101, at the time when the private carrier of passengers or light carrier of property is sold shall be taxed at the same rate as the sale of such vehicles under this section.

(*l*) Sales of the factory-built components of modular homes, panelized homes and precut homes, and panel constructed homes consisting of structural insulated panels, shall be taxed at the rate of three percent (3%).

(m) Sales of materials used in the repair, renovation, addition to, expansion and/or improvement of buildings and related facilities used by a dairy producer shall be taxed at the rate of three and one-half percent (3-½%). For the purposes of this paragraph (m), "dairy producer" means any person engaged in the production of milk for commercial use.

(2) From and after January 1, 1995, retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101, shall be taxed an additional two percent (2%).

(3) A manufacturer selling at retail in this state shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in this section.

SOURCES: Codes, 1942, § 10108; Laws, 1932, chs. 90, 91; Laws, 1934, chs. 119, 122; Laws, 1946, ch. 343; Laws, 1948, ch. 467, § 2; Laws, 1950, ch. 529; Laws, 1955, Ex Sess, ch. 109, § 9; Laws, 1958, ch. 574, § 6; Laws, 1960, ch. 167, § 1; Laws, 1962, ch. 596, §§ 1, 3; Laws, 1962, ch. 597, §§ 1, 3; Laws, 1964, ch. 532, § 1; Laws, 1964, ch. 531, § 2; Laws, 1965, Ex Sess, ch. 22, § 2; Laws, 1968, ch. 588, § 3; Laws, 1972, ch. 506, § 3; Laws, 1978, ch. 512, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 36; Laws, 1983, ch. 546, § 1; Laws, 1983, 2nd Ex Sess, ch. 6, § 5; Laws, 1984, 1st Ex Sess, ch. 10, § 3; Laws, 1985, ch. 351, § 1; Laws, 1985, ch. 516, § 2; Laws, 1987, ch. 322, § 26; Laws, 1987, ch. 426, § 1; Laws, 1988, ch.

506, § 1; Laws, 1992, ch. 419, § 3; Laws, 1992, ch. 509, § 1; Laws, 1994, ch. 563, § 7; Laws, 1998, ch. 410, § 1; Laws, 1999, ch. 452, § 1; Laws, 2005, ch. 532, § 19; Laws, 2005, 3rd Ex Sess, ch. 1, § 63; Laws, 2006, 2nd Ex Sess, ch. 1, § 1; Laws, 2007, ch. 359, § 5; Laws, 2009, ch. 493, § 1; Laws, 2014, ch. 505, § 2, effective from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 505, § 3, effective from and after July 1, 2014, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2014 amendment, in the last paragraph in (1)(c)(ii), substituted "Department of Revenue" for "Mississippi State Tax Commission" and "department" for "commission" throughout; deleted (3), which read "In lieu of the tax levied in subsection (1) of this section, there is levied on retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or any similar reciprocity agreement or compact relating to the proportional registration of commercial vehicles entered into as provided for in Section 27-19-143, a tax at the rate of three percent (3%) of the portion of the sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi. The portion of the retail sale that is attributable to the usage of such truck-tractor or semitrailer in Mississippi is the retail sales price of the truck-tractor or semitrailer multiplied by the percentage of the total miles traveled by the vehicle that are traveled in Mississippi. The tax levied pursuant to this subsection (3) shall be collected by the State Tax Commission from the purchaser of such truck-tractor or semitrailer at the time of registration of such truck-tractor or semitrailer"; and redesignated the remaining subsection accordingly.

§ 27-65-19. Public utilities.

(1)(a)(i) Except as otherwise provided in this subsection, upon every person selling to consumers, electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income of the business. Provided, gross income from sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use, and sales of potable water for residential, noncommercial or nonagricultural use shall be excluded from taxable gross income of the business. Provided further, upon every such seller using electricity, current, power, potable water, steam, coal, natural gas, liquefied petroleum gas or other fuel for nonindustrial purposes, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the cost or value of the product or service used.

(ii) Gross income from sales to a church that is exempt from federal income taxation under 26 USCS Section 501(c)(3) of electricity, current,

power, natural gas, liquefied petroleum gas or other fuel for heating, lighting or other use, and sales of potable water to such a church shall be excluded from taxable gross income of the business if the electricity, current, power, natural gas, liquefied petroleum gas or potable water is utilized on property that is primarily used for religious or educational purposes.

(b)(i) There is hereby levied, assessed and shall be collected a tax equal to one and one-half percent (1-½%) of the gross income of the business from the sale of naturally occurring carbon dioxide and anthropogenic carbon dioxide lawfully injected into the earth for:

1. Use in an enhanced oil recovery project, including, but not limited to, use for cycling, repressuring or lifting of oil; or

2. Permanent sequestration in a geological formation.

(ii) The one and one-half percent (1-½%) rate provided for in this subsection shall apply to electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel that is sold to a producer of oil and gas for use directly in enhanced oil recovery using carbon dioxide and/or the permanent sequestration of carbon dioxide in a geological formation.

(c) The one and one-half percent (1-½%) rate provided for in this subsection shall not apply to sales of fuel for automobiles, trucks, truck-tractors, buses, farm tractors or airplanes.

(d)(i) Upon every person providing services in this state, there is hereby levied, assessed and shall be collected:

1. A tax equal to seven percent (7%) of the gross income received from all charges for intrastate telecommunications services.

2. A tax equal to seven percent (7%) of the gross income received from all charges for interstate telecommunications services.

3. A tax equal to seven percent (7%) of the gross income received from all charges for international telecommunications services.

4. A tax equal to seven percent (7%) of the gross income received from all charges for ancillary services.

5. A tax equal to seven percent (7%) of the gross income received from all charges for products delivered electronically, including, but not limited to, software, music, games, reading materials or ring tones.

(ii) A person, upon proof that he has paid a tax in another state on an event described in subparagraph (i) of this paragraph (d), shall be allowed a credit against the tax imposed in this paragraph (d) on interstate telecommunications service charges to the extent that the amount of such tax is properly due and actually paid in such other state and to the extent that the rate of sales tax imposed by and paid in such other state does not exceed the rate of sales tax imposed by this paragraph (d).

(iii) Charges by one (1) telecommunications provider to another telecommunications provider holding a permit issued under Section 27-65-27 for services that are resold by such other telecommunications provider, including, but not limited to, access charges, shall not be subject to the tax levied pursuant to this paragraph (d).

(iv) For purposes of this paragraph (d):

1. "Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between points. The term "telecommunications service" includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. The term "telecommunications service" shall not include:

a. Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

b. Installation or maintenance of wiring or equipment on a customer's premises;

c. Tangible personal property;

d. Advertising, including, but not limited to, directory advertising;

e. Billing and collection services provided to third parties;

f. Internet access service;

g. Radio and television audio and video programming services regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 USCS 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

h. Ancillary services; or

i. Digital products delivered electronically, including, but not limited to, software, music, video, reading materials or ring tones.

2. "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billing, directory assistance, vertical service and voice mail service.

a. "Conference bridging" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging does not include the telecommunications services used to reach the conference bridge.

b. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

c. "Directory assistance" means an ancillary service of providing telephone number information and/or address information.

d. "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

e. "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

3. "Intrastate" means telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession.

4. "Interstate" means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in a different United States state or United States territory or possession.

5. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively.

(v) For purposes of paragraph (d), the following sourcing rules shall apply:

1. Except for the defined telecommunications services in item 3 of this subparagraph, the sales of telecommunications services sold on a call-by-call basis shall be sourced to:

a. Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or

b. Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

2. Except for the defined telecommunications services in item 3 of this subparagraph, a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

3. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

a. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service is sourced to the customer's place of primary use as required by the Mobile Telecommunication Sourcing Act.

A. A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. The home service provider shall be entitled to rely on the applicable residential or business street address supplied by such customer, if the home service provider's reliance is in good faith; and the home service provider shall be held harmless from liability for any additional taxes based on a different determination of the place of

primary use for taxes that are customarily passed on to the customer as a separate itemized charge. A home service provider shall be allowed to treat the address used for purposes of the tax levied by this chapter for any customer under a service contract in effect on August 1, 2002, as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement. Month-to-month services provided after the expiration of a contract shall be treated as an extension or renewal of such contract or agreement.

B. If the commissioner determines that the address used by a home service provider as a customer's place of primary use does not meet the definition of the term "place of primary use" as defined in subitem a.A. of this item 3, the commissioner shall give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination; however, the customer shall have the opportunity, prior to such notice of determination, to demonstrate that such address satisfies the definition.

C. The department has the right to collect any taxes due directly from the home service provider's customer that has failed to provide an address that meets the definition of the term "place of primary use" which resulted in a failure of tax otherwise due being remitted.

b. A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

A. The seller's telecommunications system; or

B. Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. A sale of a prepaid calling service or prepaid wireless calling service shall be subject to the tax imposed by this paragraph if the sale takes place in this state. If the customer physically purchases a prepaid calling service or prepaid wireless calling service at the vendor's place of business, the sale is deemed to take place at the vendor's place of business. If the customer does not physically purchase the service at the vendor's place of business, the sale of a prepaid calling card or prepaid wireless calling card is deemed to take place at the first of the following locations that applies to the sale:

A. The customer's shipping address, if the sale involves a shipment;

B. The customer's billing address;

C. Any other address of the customer that is known by the vendor; or

D. The address of the vendor, or alternatively, in the case of a prepaid wireless calling service, the location associated with the mobile telephone number.

4. A sale of a private communication service is sourced as follows:

a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

b. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

c. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

d. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

5. A sale of ancillary services is sourced to the customer's place of primary use.

(vi) For purposes of subparagraph (v) of this paragraph (d):

1. "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

2. "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

4. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

5. "Customer channel termination point" means the location where the customer either inputs or receives the communications.

6. "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

7. "Home service provider" has the meaning ascribed to such term in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

8. "Mobile telecommunications service" has the meaning ascribed to such term in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

9. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

10. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunications service.

11. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

12. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary service, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

13. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of such channel or channels.

14. "Service address" means:

a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

b. If the location in subitem a of this item 14 is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

c. If the location in subitems a and b of this item 14 are not known, the location of the customer's place of primary use.

(vii)1. For purposes of this subparagraph (vii), "bundled transaction" means a transaction that consists of distinct and identifiable properties or services which are sold for a single nonitemized price but which are treated differently for tax purposes.

2. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, or audio or video programming services taxed under this chapter in which the price of the bundled transaction is attributable to properties or services that are taxable and nontaxable, the portion of the price that is attributable to any nontaxable property or service shall be subject to the tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business.

3. In the case of a bundled transaction that includes telecommunications services, ancillary services, Internet access, audio or video programming services subject to tax under this chapter in which the price is attributable to properties or services that are subject to the tax but the tax revenue from the different properties or services are dedicated to different funds or purposes, the provider shall allocate the price among the properties or services:

a. By reasonably identifying the portion of the price attributable to each of the properties and services from its books and records kept in the regular course of business; or

b. Based on a reasonable allocation methodology approved by the department.

4. This subparagraph (vii) shall not create a right of action for a customer to require that the provider or the department, for purposes of determining the amount of tax applicable to a bundled transaction, allocate the price to the different portions of the transaction in order to minimize the amount of tax charged to the customer. A customer shall not be entitled to rely on the fact that a portion of the price is attributable to properties or services not subject to tax unless the provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the portion of the price attributable to the properties or services not subject to the tax.

(2) Persons making sales to consumers of electricity, current, power, natural gas, liquefied petroleum gas or other fuel for residential heating, lighting or other residential noncommercial or nonagricultural use or sales of potable water for residential, noncommercial or nonagricultural use shall indicate on each statement rendered to customers that such charges are exempt from sales taxes.

(3) There is hereby levied, assessed and shall be paid on transportation charges on shipments moving between points within this state when paid

directly by the consumer, a tax equal to the rate applicable to the sale of the property being transported. Such tax shall be reported and paid directly to the Department of Revenue by the consumer.

SOURCES: Codes, 1942, § 10109; Laws, 1932, chs. 90, 91; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1944, ch. 129, § 2; Laws, 1955, Ex Sess, ch. 109, § 10; Laws, 1956, ch. 419, § 3; Laws, 1958, ch. 574, § 7; Laws, 1964, ch. 531, § 3; Laws, 1968, ch. 588, § 4; Laws, 1972, ch. 506, § 2; Laws, 1978, ch. 490, §§ 1, 2; Laws, 1979, ch. 302, § 7; Laws, 1982, Ex Sess, ch. 17, § 37; Laws, 1983, 2nd Ex Sess, ch. 6, § 6; Laws, 1984, 1st Ex Sess, Ch. 10, § 4; Laws, 1985, ch. 351, § 2; Laws, 1992, ch. 419, § 4; Laws, 1993, ch. 473, § 1; Laws, 1997, ch. 536, § 2; Laws, 1998, ch. 519, § 1; Laws, 2000, ch. 303, § 6; Laws, 2001, ch. 464, § 1; Laws, 2002, ch. 520, § 1; Laws, 2004, ch. 306, § 1; Laws, 2005, 3rd Ex Sess, ch. 1, § 64; Laws, 2006, ch. 461, § 1; Laws, 2007, ch. 329, § 1; Laws, 2009, ch. 475, § 1; Laws, 2012, ch. 507, § 1; Laws, 2013, ch. 310, § 1; Laws, 2013, ch. 537, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of Chapter 310, Laws of 2013, effective from and after July 1, 2013 (approved March 7, 2013), amended this section. Section 2 of Chapter 537, Laws of 2013, effective from and after July 1, 2014 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 537, Laws of 2013, which contains language that specifically provides that it supersedes § 27-65-19 as amended by Chapter 310, Laws of 2013.

Editor's Note — Laws of 2012, ch. 507, § 2, effective from and after July 1, 2012, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2013, ch. 310, § 2, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective [July 1, 2013], whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment

of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

Amendment Notes — The 2012 amendment inserted the (1)(a)(i) designator and added (1)(a)(ii); substituted "Department of Revenue" for "State Tax Commission" at the end of (3); and substituted "department" for "commission" and made minor stylistic changes throughout the section.

The first 2013 amendment (ch. 310), effective July 1, 2013, added (1)(c)(iii).

The second 2013 amendment (ch. 537), effective July 1, 2014, in (1), rewrote and combined former (b) and (c)(ii) into present (b)(i), deleted former (c)(i), redesignated former (c)(iii) as (b)(ii), redesignated former (d) and (e) as (c) and (d), and substituted "this paragraph (d)" for "this paragraph (e)" everywhere it appears.

RESEARCH REFERENCES

ALR. Cable Television Equipment or Services as Subject to Sales or Use Tax. 23 A.L.R. 6th 165.

Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

§ 27-65-21. Contracting, etc.

(1)(a)(i) Upon every person engaging or continuing in this state in the business of contracting or performing a contract or engaging in any of the activities, or similar activities, listed below for a price, commission, fee or wage, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-½%) of the total contract price or compensation received, including all charges related to the contract such as finance charges and late charges, from constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, any other improvement or structure or any part thereof when the compensation received exceeds Ten Thousand Dollars ($10,000.00). Such activities shall not include constructing, repairing or adding to property which retains its identity as personal property. The tax imposed in this section is levied upon the prime contractor and shall be paid by him.

(ii) Amounts included in the contract price or compensation received representing the sale of manufacturing or processing machinery for a manufacturer or custom processor shall be taxed at the rate of one and one-half percent (1-½%) in lieu of the three and one-half percent (3-½%).

(b) The following shall be excluded from the tax levied by this section:

(i) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, electrical system,

air-conditioning system, heating system or any other improvement or structure which is used for or primarily in connection with a residence or dwelling place for human beings. Such residences shall include homes, mobile homes, summer cottages, fishing and hunting camp buildings and similar buildings, but shall not include apartment buildings, condominiums, hotels, motels, hospitals, nursing or retirement homes, tourist cottages or other commercial establishments.

(ii) The portion of the total contract price attributable to design or engineering services if:

1. The total contract price for the project exceeds the sum of One Hundred Million Dollars ($100,000,000.00); or

2. The engineering services are performed by a professional engineer as defined in Section 73-13-3, who is the general or prime contractor.

(iii) The contract price or compensation received to restore, repair or replace a utility distribution or transmission system that has been damaged due to ice storm, hurricane, flood, tornado, wind, earthquake or other natural disaster if such restoration, repair or replacement is performed by the entity providing the service at its cost.

(iv) The contract price or compensation received for constructing, building, erecting, repairing or adding to any building, facility or structure located at any refinery as defined in Section 27-65-24.

(c) Sales of materials and services for use in the activities hereby excluded from taxes imposed by this section, except services used in activities excluded pursuant to paragraph (b)(iii) of this subsection, shall be subject to taxes imposed by other sections in this chapter.

(2) Upon every person engaging or continuing in this state in the business of contracting or performing a contract of redrilling, or working over, or of drilling an oil well or a gas well, regardless of whether such well is productive or nonproductive, for any valuable consideration, there is hereby levied, assessed and shall be collected a tax equal to three and one-half percent (3-½%) of the total contract price or compensation received when such compensation exceeds Ten Thousand Dollars ($10,000.00).

The words, terms and phrases as used in this subsection shall have the meaning ascribed to them as follows:

"Operator" — One who holds all or a fraction of the working or operating rights in an oil or gas lease, and is obligated for the costs of production either as a fee owner or under a lease or any other form of contract creating working or operating rights.

"Bottom-hole contribution" — Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. The contribution is payable whether the well is productive or nonproductive.

"Dry-hole contribution" — Money or property given to an operator for his use in the drilling of a well on property in which the payor has no interest. Such contribution is payable only in the event the well is found to be nonproductive.

"Turnkey drilling contract" — A contract for the drilling of a well which requires the driller to drill a well and, if commercial production is obtained, to equip the well to such stage that the lessee or operator may turn a valve and the oil will flow into a tank.

"Total contract price or compensation received" — As related to oil and gas well contractors, shall include amounts received as compensation for all costs of performing a turnkey drilling contract; amounts received or to be received under assignment as dry-hole money or bottom-hole money; and shall mean and include anything of value received by the contractor as remuneration for services taxable hereunder. When the kind and amount of compensation received by the contractor is contingent upon production, the taxable amount shall be the total compensation receivable in the event the well is a dry hole. The taxable amount in the event of production when the contractor receives a production interest of an undetermined value in lieu of a fixed compensation shall be an amount equal to the compensation to the contractor if the well had been a dry hole.

(3) When the work to be performed under any contract is sublet by the prime contractor to different persons, or in separate contracts to the same persons, each such subcontractor performing any part of said work shall be liable for the amount of the tax which accrues on account of the work performed by such person when the tax heretofore imposed has not been paid upon the whole contract by the prime contractor.

When a person engaged in any business on which a tax is levied in Section 27-65-23, also qualifies as a contractor, and contracts with the owner of any project to perform any services in excess of Ten Thousand Dollars ($10,000.00) herein taxed, such person shall pay the tax imposed by this section in lieu of the tax imposed by Section 27-65-23.

Any person entering into any contract over Seventy-five Thousand Dollars ($75,000.00) as defined in this section shall, before beginning the performance of such contract or contracts, either pay the contractors' tax in advance, together with any use taxes due under Section 27-67-5, or execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner conditioned that all taxes which may accrue to the State of Mississippi under this chapter, or under Section 27-67-5 and Section 27-7-5, will be paid when due. Such bonds shall be either (a) "job bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of a specified job or activity regardless of date of completion; or (b) "blanket bonds" which guarantee payment when due of the aforesaid taxes resulting from performance of all jobs or activities taxable under this section begun during the period specified therein, regardless of date of completion. The payments of the taxes due or the execution and filing of a surety bond shall be a condition precedent to the commencing work on any contract taxed hereunder. Provided, that when any bond is filed in lieu of the prepayment of the tax under this section, that the tax shall be payable monthly on the amount received during the previous month, and any use taxes due shall be payable on

or before the twentieth day of the month following the month in which the property is brought into Mississippi.

Any person failing either to execute any bond herein provided, or to pay the taxes in advance, before beginning the performance of any contract shall be denied the right to perform such contract until he complies with such requirements, and the commissioner is hereby authorized to proceed either under Section 27-65-59, under Section 27-65-61 or by injunction to prevent any activity in the performance of such contract until either a satisfactory bond is executed and filed, or all taxes are paid in advance, and a temporary injunction enjoining the execution of such contract shall be granted without notice by any judge or chancellor now authorized by law to grant injunctions.

Any person liable for a tax under this section may apply for and obtain a material purchase certificate from the commissioner which may entitle the holder to purchase materials and services that are to become a component part of the structure to be erected or repaired with no tax due. Provided, that the contractor applying for the contractor's material purchase certificate shall furnish the Department of Revenue a list of all work sublet to others, indicating the amount of work to be performed, and the names and addresses of each subcontractor.

SOURCES: Codes, 1942, § 10110; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1942, ch. 122; Laws, 1944, ch. 129, § 3; Laws, 1950, ch. 530, § 2; Laws, 1955, Ex Sess, ch. 109, § 11; Laws, 1956, ch. 420, § 1; Laws, 1958, ch. 574, § 8; Laws, 1962, ch. 598, §§ 1, 3; Laws, 1964, ch. 532, § 2; Laws, 1968, ch. 588, § 5; Laws, 1982, ch. 442, § 1; Laws, 1984, ch. 458, § 1; Laws, 1985, ch. 351, § 3; Laws, 1987, ch. 432; Laws, 1996, ch. 503, § 2; Laws, 1997, ch. 320, § 1; Laws, 2005, ch. 434, § 1; Laws, 2007, ch. 442, § 1; Laws, 2010, ch. 449, § 3; Laws, 2011, ch. 452, § 2; Laws, 2014, ch. 472, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2011 amendment deleted the automatic reverter provision, which would have been effective July 1, 2011.

The 2014 amendment, in (1)(b)(ii), inserted the paragraph 1 designation and added paragraph 2.

JUDICIAL DECISIONS

I. Under Current Law.

2. Construction and application, generally.

I. Under Current Law.

2. Construction and application, generally.

Sureties upon contractors' bonds under Miss. Code Ann. § 27-65-21 were not entitled to notice of their principals' deficiencies, audits, or assessments from the Mississippi State Tax Commission, as their right to notice did not arise until principals defaulted on paying the assessments under the language of the bonds and Miss. Code Ann. § 27-65-57. Fid. & Guar. Ins. Co. v. Blount, 63 So. 3d 453 (Miss. 2011).

ATTORNEY GENERAL OPINIONS

The current corporate lessee of county-owned property first leased in 1963 under the old A. & I. statutes with exemption from ad valorem taxes for an unspecified

period is entitled to an exemption for 10 years from the date the county approved assignment of the lease to that company. When the 10 years has already expired and the county erroneously omitted that leasehold from the tax assessment rolls for several years, the county may not assess back taxes. Approval by the county of sub-leases of the property is not an unlawful donation to a private party. Munn, March 9, 2007, A.G. Op. #07-00067, 2007 Miss. AG LEXIS 101.

§ 27-65-22. Amusements.

(1) Upon every person engaging or continuing in any amusement business or activity, which shall include all manner and forms of entertainment and amusement, all forms of diversion, sport, recreation or pastime, shows, exhibitions, contests, displays, games or any other and all methods of obtaining admission charges, donations, contributions or monetary charges of any character, from the general public or a limited or selected number thereof, directly or indirectly in return for other than tangible property or specific personal or professional services, whether such amusement is held or conducted in a public or private building, hotel, tent, pavilion, lot or resort, enclosed or in the open, there is hereby levied, assessed and shall be collected a tax equal to seven percent (7%) of the gross income received as admission, except as otherwise provided herein. In lieu of the rate set forth above, there is hereby imposed, levied and assessed, to be collected as hereinafter provided, a tax of three percent (3%) of gross revenue derived from sales of admission to publicly owned enclosed coliseums and auditoriums (except admissions to athletic contests between colleges and universities). There is hereby imposed, levied and assessed a tax of seven percent (7%) of gross revenue derived from sales of admission to events conducted on property managed by the Mississippi Veterans Memorial Stadium, which tax shall be administered in the manner prescribed in this chapter, subject, however, to the provisions of Sections 55-23-3 through 55-23-11.

(2) The operator of any place of amusement in this state shall collect the tax imposed by this section, in addition to the price charged for admission to any place of amusement, and under all circumstances the person conducting the amusement shall be liable for, and pay the tax imposed based upon the actual charge for such admission. Where permits are obtained for conducting temporary amusements by persons who are not the owners, lessees or custodians of the buildings, lots or places where the amusements are to be conducted, or where such temporary amusement is permitted by the owner, lessee or custodian of any place to be conducted without the procurement of a permit as required by this chapter, the tax imposed by this chapter shall be paid by the owner, lessee or custodian of such place where such temporary amusement is held or conducted, unless paid by the person conducting the amusement, and the applicant for such temporary permit shall furnish with the application therefor, the name and address of the owner, lessee or custodian of the premises upon which such amusement is to be conducted, and such owner, lessee or custodian shall be notified by the commission of the issuance of such permit, and of the joint liability for such tax.

(3) The tax imposed by this section shall not be levied or collected upon:

(a) Any admissions charged at any place of amusement operated by a religious, charitable or educational organization, or by a nonprofit civic club or fraternal organization (i) when the net proceeds of such admissions do not inure to any one or more individuals within such organization and are to be used solely for religious, charitable, educational or civic purposes; or (ii) when the entire net proceeds are used to defray the normal operating expenses of such organization, such as loan payments, maintenance costs, repairs and other operating expenses;

(b) Any admissions charged to hear gospel singing when promoted by a duly constituted local, bona fide nonprofit charitable or religious organization, irrespective of the fact that the performers and promoters are paid out of the proceeds of admissions collected, provided the program is composed entirely of gospel singing and not generally mixed with hillbilly or popular singing;

(c) Any admissions charged at any athletic games or contests between high schools or between grammar schools;

(d) Any admissions or tickets to or for baseball games between teams operated under a professional league franchise;

(e) Any admissions to county, state or community fairs, or any admissions to entertainments presented in community homes or houses which are publicly owned and controlled, and the proceeds of which do not inure to any individual or individuals;

(f) Any admissions or tickets to organized garden pilgrimages and to antebellum and historic houses when sponsored by an organized civic or garden club;

(g) Any admissions to any golf tournament held under the auspices of the Professional Golf Association or United States Golf Association wherein touring professionals compete, if such tournament is sponsored by a nonprofit association incorporated under the laws of the State of Mississippi where no dividends are declared and the proceeds do not inure to any individual or group;

(h) Any admissions to university or community college conference, state, regional or national playoffs or championships;

(i) Any admissions or fees charged by any county or municipally owned and operated swimming pools, golf courses and tennis courts other than sales or rental of tangible personal property;

(j) Any admissions charged for the performance of symphony orchestras, operas, vocal or instrumental artists in which professional or amateur performers are compensated out of the proceeds of such admissions, when sponsored by local music or charity associations, or amateur dramatic performances or professional dramatic productions when sponsored by a children's dramatic association, where no dividends are declared, profits received, nor any salary or compensation paid to any of the members of such associations, or to any person for procuring or producing such performance;

(k) Any admissions or tickets to or for hockey games between teams operated under a professional league franchise;

(*l*) Any admissions or tickets to or for events sanctioned by the Mississippi Athletic Commission that are held within publicly owned enclosed coliseums and auditoriums;

(m) Guided tours on any navigable waters of this state, which include providing accommodations, guide services and/or related equipment operated by or under the direction of the person providing the tour, for the purposes of outdoor tourism; and

(n) Any admissions to events held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds from the grant program authorized under Section 18 of Chapter 530, Laws of 1995.

SOURCES: Laws, 1978, ch. 501, § 1; Laws, 1979, ch. 428, § 2; Laws, 1982, Ex Sess, ch. 17, § 38; Laws, 1983, 2nd Ex Sess, ch. 6, § 7; Laws, 1984, 1st Ex Sess, ch. 10, § 5; Laws, 1989, ch. 479, § 1; Laws, 1989, ch. 548, § 7; Laws, 1990, ch. 312, § 1; Laws, 1992, ch. 419, § 5; Laws, 1994, ch. 322, § 1; Laws, 1996, ch. 524, § 1; Laws, 1997, ch. 568, § 1; Laws, 2007, ch. 512, § 1; Laws, 2014, ch. 528, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in the second sentence in (1), deleted "(a)" preceding "publicly owned enclosed coliseums" and deleted "or (b) livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds from the grant program authorized under Section 18 of Chapter 530, Laws of 1995" at the end; added (3)(m) and (n), and made related changes.

§ 27-65-23. Miscellaneous businesses.

RESEARCH REFERENCES

ALR. Cable Television Equipment or Services as Subject to Sales or Use Tax. 23 A.L.R. 6th 165.

§ 27-65-24. Sales of manufacturing or processing machinery to be installed and/or used at refinery; performance of construction activities at or in regard to refinery.

(1) There is levied, assessed and shall be collected a tax on the sale of manufacturing or processing machinery to be installed and/or used at a refinery in this state and on the performance of construction activities at or in regard to a refinery in this state. The tax is in the amount of:

(a) One and one-half percent (1-½%) on the gross proceeds of sales for manufacturing or processing machinery without any regard as to whether or not the machinery retains its identity as tangible personal property after installation; and

(b) Three and one-half percent (3-½%) of one hundred three and one-half percent (103-½%) of the total contract price or compensation paid for the performance of a construction activity.

(2) If the owner of the refinery holds a direct pay permit issued by the Department of Revenue under Section 27-65-93, the owner shall furnish the permit to the seller or person performing the construction activity unless the holder of the direct pay permit is given written instructions or written authority to do otherwise by the commissioner. After being furnished the direct pay permit, the seller or person performing the construction activity shall be relieved of the duty to collect the tax imposed under subsection (1) of this section and the owner of the refinery shall pay the tax in the manner required by rule and regulation promulgated by the commissioner. The commissioner may assign a distinctive number to the refinery and issue the distinctive number to the owner. The owner of the refinery may furnish the distinctive number to persons performing construction activities in order to allow such persons to purchase component materials and parts for use in the construction activity without the requirement of paying sales tax on the purchases.

(3) Any owner of a refinery who makes application for a distinctive number as provided for in subsection (2), shall be required to execute and file with the commissioner a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the State of Mississippi under this chapter will be paid when due.

(4) As used in this section:

(a) "Refinery" means any facility that manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, or alcohol. The term "refinery" does not include terminals, bulk plants or other locations where finished products are blended.

(b) "Construction activity" means the performance of any activity involving and/or incidental to constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing or adding to any building, highway, street, sidewalk, bridge, culvert, sewer, irrigation or water system, drainage or dredging system, levee or levee system or any part thereof, railway, reservoir, dam, power plant, electrical system, air-conditioning system, heating system, transmission line, pipeline, tower, dock, storage tank, wharf, excavation, grading, water well, and other improvement or structure or any part thereof.

(c) "Total contract price or compensation received" means all compensation received for the performance of construction activities, including monies received for all charges related to the contract or construction activities, including, but not limited to, finance charges and late charges; however, where the total contract price of a project exceeds the sum of One Hundred Million Dollars ($100,000,000.00) that portion of the compensation received in regard to the project that is attributable to design or engineering shall not be considered part of the total contract price or compensation received for construction activities from the project.

SOURCES: Laws, 2010, ch. 449, § 2; Laws, 2011, ch. 452, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment deleted former (5), which read: "This section shall stand repealed from and after July 1, 2011."

§ 27-65-31. Seller to collect tax.

[Effective until January 1, 2015, this section will read:]

Any person liable for a privilege tax levied and assessed by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, shall add the amount of such tax due by him to the sales price or gross income and, in addition thereto, shall collect, insofar as practicable, the amount of the tax due by him from the purchaser at the time the sales price or gross income is collected.

The commissioner is authorized, in his discretion, to prescribe by rule or regulation, brackets or schedules by which the applicable tax shall be collected from the purchaser.

The commissioner shall have the authority to make changes as necessary by rule or regulation to implement an agreement for the collection of sales tax by direct marketers with limited contact in Mississippi if, in his discretion, it is beneficial to the state for him to do so.

It shall be unlawful for any person, who is liable for a privilege tax levied by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, to fail or refuse to add to the sales price and collect, insofar as practicable, the amount of tax due by him on each sale, except where the tax was included in the cost of furnishing service when said cost was a factor in the fixing of rates and charges.

The tax due under the provisions of this chapter shall be computed and paid on gross income or gross proceeds of sales of the business, regardless of the fact that small unit sales may be within the bracket of one (1) of the schedules which does not provide for the collection of the tax from the customer.

Nothing in this section with reference to the collection of the tax from the customer shall be construed to impair, abridge, alter or affect the obligation of any contract in existence at the time it becomes effective.

When the tax collected for any filing period is in excess of the amount due, the total tax collected, including that in excess of the computed liability, shall be paid to the commissioner. This provision shall be construed with other provisions of the law and given effect so as to result in the payment to the commissioner of the total tax collected if in excess of the amount due when computed at the applicable rates.

The funds collected by the taxpayer (seller) from the purchaser pursuant to the provisions of this chapter shall be considered "trust fund monies" and the taxpayer shall hold these funds in trust for the State of Mississippi; said funds to be separately accounted for as provided by regulation of the commissioner. If the taxpayer fails to remit these trust fund monies as required by law, then the taxpayer may be assessed with a penalty in three (3) times the amount of taxes due. This penalty is to be assessed and collected in the same manner as

taxes imposed by this chapter and shall be in addition to all other penalties and/or interest otherwise imposed. For purposes of this section there shall be a presumption that the taxpayer collected the tax from the customer or purchaser.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in a sum not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00).

[Effective from and after January 1, 2015, this section will read:]

Any person liable for a privilege tax levied and assessed by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, shall add the amount of such tax due by him to the sales price or gross income and, in addition thereto, shall collect, insofar as practicable, the amount of the tax due by him from the purchaser at the time the sales price or gross income is collected. For purposes of this section, there shall be a presumption that the taxpayer collected the tax from the customer or purchaser.

The commissioner is authorized, in his discretion, to prescribe by rule or regulation, brackets or schedules by which the applicable tax shall be collected from the purchaser.

The commissioner shall have the authority to make changes as necessary by rule or regulation to implement an agreement for the collection of sales tax by direct marketers with limited contact in Mississippi if, in his discretion, it is beneficial to the state for him to do so.

It shall be unlawful for any person, who is liable for a privilege tax levied by this chapter except the taxes levied by Sections 27-65-15, 27-65-17(3) and 27-65-21, Mississippi Code of 1972, to fail or refuse to add to the sales price and collect, insofar as practicable, the amount of tax due by him on each sale, except where the tax was included in the cost of furnishing service when said cost was a factor in the fixing of rates and charges.

The tax due under the provisions of this chapter shall be computed and paid on gross income or gross proceeds of sales of the business, regardless of the fact that small unit sales may be within the bracket of one (1) of the schedules which does not provide for the collection of the tax from the customer.

Nothing in this section with reference to the collection of the tax from the customer shall be construed to impair, abridge, alter or affect the obligation of any contract in existence at the time it becomes effective.

When the tax collected for any filing period is in excess of the amount due, the total tax collected, including that in excess of the computed liability, shall be paid to the commissioner. This provision shall be construed with other provisions of the law and given effect so as to result in the payment to the commissioner of the total tax collected if in excess of the amount due when computed at the applicable rates.

The funds collected by the taxpayer (seller) from the purchaser pursuant to the provisions of this chapter shall be considered "trust fund monies" and the

taxpayer shall hold these funds in trust for the State of Mississippi. The funds shall be separately accounted for as provided by regulation of the commissioner. If the taxpayer fails to remit these trust fund monies as required by law, then the taxpayer may be assessed with a penalty in three (3) times the amount of taxes due. This penalty is to be assessed and collected in the same manner as taxes imposed by this chapter and shall be in addition to all other penalties and/or interest otherwise imposed. Notwithstanding any other provision of this section, the penalty imposed in this paragraph shall not be imposed based on any presumption that the taxpayer collected sales tax from the purchaser. The penalty provided in this paragraph shall not be levied unless the commissioner shall prove by preponderance of the evidence that the taxpayer actually collected these trust fund monies from the purchaser and knowingly and intentionally failed to remit them.

Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in a sum not less than Fifty Dollars ($50.00) nor more than One Hundred Dollars ($100.00).

SOURCES: Codes, 1942, § 10117; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1948, ch. 440, § 2; Laws, 1952, ch. 403, § 2; Laws, 1955, Ex Sess, ch. 109, § 17; Laws, 1958, ch. 574, § 12; Laws, 1970, ch. 547, § 1; Laws, 1978, ch. 476, § 4; Laws, 1986, ch. 451, § 3; Laws, 1998, ch. 359, § 1; Laws, 1999, ch. 452, § 2; Laws, 2014, ch. 476, § 11, effective from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2014 amendment (ch. 476), effective January 1, 2015, in the second version of the section, added the last sentence in the first paragraph; in the eighth paragraph, substituted "State of Mississippi. The funds shall be" for "State of Mississippi, said funds to be," deleted the former last sentence, which read "For purposes of this section there shall be a presumption that the taxpayer collected the tax from the customer or purchaser" and added the present last two sentences; and made minor stylistic changes.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-65-33. Returns.

(1)(a) Except as otherwise provided in this section, the taxes levied by this chapter shall be due and payable on or before the twentieth day of the month next succeeding the month in which the tax accrues, except as otherwise provided. Returns and payments placed in the mail must be postmarked by the due date in order to be considered timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. The taxpayer shall make a return showing the gross proceeds of sales or the gross income of the business, and any and all allowable deductions, or exempt sales, and compute the tax due for the period covered.

(b) As compensation for collecting sales and use taxes, complying fully with the applicable statutes, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

(i) The compensation or discount shall not apply to taxes levied under the provisions of Sections 27-65-19 and 27-65-21, or on charges for ginning cotton under Section 27-65-23.

(ii) The compensation or discount shall not apply to taxes collected by a county official or state agency.

(iii) The compensation or discount shall not exceed Fifty Dollars ($50.00) per month, or Six Hundred Dollars ($600.00) per calendar year, per business location on each state sales tax return, or on each use tax return.

(iv) The compensation or discount shall not apply to any wholesale tax, the rate of which is equal to or greater than the tax rate applicable to retail sales of the same property or service. The retailer of such items shall be entitled to the compensation based on the tax computed on retail sales before application of the credit for any tax paid to the wholesaler, jobber or other person.

(v) The compensation or discount allowed and taken for any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period.

(c) As compensation for collecting any tax imposed under the authority of a local and private law of the State of Mississippi which is collected and paid to the Department of Revenue in the same or similar manner that state sales taxes are collected and paid, complying fully with such applicable law, filing returns and supplements thereto and paying all taxes by the twentieth of the month following the period covered, the taxpayer may discount and retain two percent (2%) of the liability on each return subject to the following limitations:

(i) The compensation or discount shall not apply to taxes collected by a county official or state agency.

(ii) The compensation or discount shall not exceed Fifty Dollars ($50.00) per month, or Six Hundred Dollars ($600.00) per calendar year, per business location on each tax return.

(iii) The compensation or discount allowed and taken for any filing period may be reassessed and collected when an audit of a taxpayer's records reveals a tax deficiency for that period.

(2) A taxpayer required to collect sales taxes under this chapter and having an average monthly sales tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated sales tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's sales tax liability for the month of June of the preceding calendar year. For the purposes of calculating a taxpayer's estimated sales tax liability for the month of June of the current calendar year, the taxpayer does not have to include taxes due on credit sales for which the taxpayer has not received payment before June 20. Payments required to be made under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this subsection and the taxpayer's actual sales tax liability for the month of June for which the estimated payment was required to be made. Payments made by a taxpayer under this subsection shall not be considered to be collected for the purposes of any sales tax diversions required by law until the taxpayer files a return for the actual sales taxes collected during the month of June. This subsection shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi.

(3) All returns shall be sworn to by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, or authorized agent, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust, estate, or in any other group or combination acting as a unit, any individual delegated by such firm shall swear to the return on behalf of the taxpayer. The commissioner may prescribe methods by which the taxpayer may swear to his return.

(4) The commissioner may promulgate rules and regulations to require or permit filing periods of any duration, in lieu of monthly filing periods, for any taxpayer or group thereof.

(5) The commissioner may require the execution and filing by the taxpayer with the commissioner of a good and solvent bond with some surety company authorized to do business in Mississippi as surety thereon in an amount double the aggregate tax liability by such taxpayer for any previous three-month period within the last calendar year or estimated three (3) months' tax liability. The bond is to be conditioned for the prompt payment of such taxes as may be due for each such return.

(6) The commissioner, for good cause, may grant such reasonable additional time within which to make any return required under the provisions of this chapter as he may deem proper, but the time for filing any return shall not be extended beyond the twentieth of the month next succeeding the regular due date of the return without the imposition of interest at the rate of one percent (1%) per month or fractional part of a month from the time the return was due until the tax is paid.

(7) For persistent, willful or recurring failure to make any return and pay the tax shown thereby to be due by the time specified, there shall be added to the amount of tax shown to be due ten percent (10%) damages, or interest at the rate of one percent (1%) per month, or both.

(8) Any taxpayer may, upon making application therefor, obtain from the commissioner an extension of time for the payment of taxes due on credit sales until collections thereon have been made. When such extension is granted, the taxpayer shall thereafter include in each monthly or quarterly report all collections made during the preceding month or quarter, and shall pay the taxes due thereon at the time of filing such report. Such permission may be revoked or denied at the discretion of the commissioner when, in his opinion, a total sales basis will best reflect the taxable income or expedite examination of the taxpayer's records.

(9) Any taxpayer reporting credit sales before collection thereof has been made may take credit on subsequent returns or reports for bad debts actually charged off, if such amounts charged off have previously been included in taxable gross income or taxable gross proceeds of sales, as the case may be, and the tax paid thereon. However, any amounts subsequently collected on accounts that have been charged off as bad debts shall be included in subsequent reports and the tax shall be paid thereon.

(10) In cases where an extension of time has been granted by the commissioner for payment of taxes due on credit sales and the taxpayer thereafter discontinues the business, such taxpayer shall be required to file with the commissioner within ten (10) days, or such further time as the commissioner may direct, from the date of the discontinuance of such business, a special report showing the amounts of any credit sales which have not been included in determining the measure of the tax previously paid and any other information with reference to credit sales as the commissioner may require. The commissioner shall thereupon investigate the facts with reference to credit sales and the condition of the accounts, and shall determine, from the best evidence available, the value of all open accounts, notes or other evidence of debt arising from credit sales. The value

of all notes, open accounts and other evidence of debt, as thus determined by the commissioner, shall be used in determining the amount of the tax for which such taxpayer shall be liable. When the amount of the tax shall have been ascertained, the taxpayer shall be required to pay the same within ten (10) days or such further time as the commissioner may allow, notwithstanding the fact that such note or accounts may still remain uncollected.

SOURCES: Codes, 1942, § 10118; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1952, ch. 403, § 3; Laws, 1955, Ex Sess, ch. 109, § 18; Laws, 1958, ch. 575, § 2; Laws, 1968, ch. 588, § 10; Laws, 1976, ch. 395; Laws, 1978, ch. 476, § 5; Laws, 1984, ch. 458, § 3; Laws, 1986, ch. 451, § 4; Laws, 1994, ch. 309 § 1; Laws, 1995, ch. 508, § 2; Laws, 1995, ch. 549, § 2; Laws, 2002, ch. 539, § 2; Laws, 2005, ch. 330, § 2; Laws, 2007, ch. 536, § 2; Laws, 2008, ch. 507, § 10; Laws, 2009, ch. 563, § 8; Laws, 2010, ch. 562, § 8; Laws, 2012, ch. 547, § 4; Laws, 2013, ch. 420, § 1, eff from and after passage (approved March 20, 2013.)

Editor's Note — Chapter 420, Laws of 2013, effective upon passage (approved March 20, 2013) made the same changes to both versions of this section (effective until July 1, 2013, and effective from and after July 1, 2013).

Amendment Notes — The 2012 amendment extended the bracketed effective date in both versions from "2012" to "2013", in (2), substituted "Department of Revenue" for "State Tax Commission" throughout, substituted "June 25, 2014" for "June 25, 2003" in the first sentence of the second version of (2) and made minor stylistic changes.

The 2013 amendment, effective March 20, 2013, in (1) in both versions of the section, inserted (a) and (b) designators, redesignated (1)(a) through (e) as (1)(b)(i) through (v), and added (1)(c).

§ 27-65-35. Failure to file return; notice.

[Effective until January 1, 2015, this section will read:]

If no return is made on or before the due date by any taxpayer required to make a return, the commissioner, as soon as practicable after the due date, shall make an assessment of taxes and damages from any information available, which shall be prima facie correct. The commissioner shall give written notice to the taxpayer of the tax and damages thus assessed and demand payment within sixty (60) days from the date of the notice. The notice shall be sent by mail to the taxpayer, or delivered by an agent of the commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's place of business or residence. However, if the taxpayer shall file a return and pay the tax shown to be due within sixty (60) days from the date of the assessment, the return and payment shall be accepted in lieu of the assessment.

[Effective from and after January 1, 2015, this section will read:]

If no return is made on or before the due date by any taxpayer required to make a return, the commissioner, as soon as practicable after the due date, shall make an assessment of taxes and damages from any information available, which shall be prima facie correct. The commissioner shall give written notice by mail or by personal delivery to the taxpayer of the tax and damages thus assessed and demand payment within sixty (60) days from the

date the commissioner mailed or hand delivered the notice. In the case of an individual, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to the taxpayer, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the taxpayer's residence. In the case of a partnership, the notice shall be sent by mail to the partnership or delivered by an agent of the commissioner to any partner, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the residence of any partner. In the case of a corporation, limited liability company, joint venture, association, estate, trust or other group or combination acting as a unit, including any government entity, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to an officer of the entity, to someone above the age of sixteen (16) years at the residence of an officer of the entity or to a manager or general agent at the taxpayer's place of business. However, if the taxpayer shall file a return and pay the tax shown to be due within sixty (60) days from the date the commissioner mailed or hand delivered the assessment, the return and payment shall be accepted in lieu of the assessment.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess, ch. 106, § 1; Laws, 1958, ch. 576; Laws, 1976, ch. 435; Laws, 1992, ch. 407, § 1; Laws, 2007, ch. 359, § 1; Laws, 2009, ch. 492, § 103; Laws, 2014, ch. 476, § 12, effective from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2014 amendment (ch. 476), effective January 1, 2015, rewrote the section, which formerly read "If no return is made on or before the due date by any taxpayer required to make a return, the commissioner, as soon as practicable

after the due date, shall make an assessment of taxes and damages from any information available, which shall be prima facie correct. The commissioner shall give written notice to the taxpayer of the tax and damages thus assessed and demand payment within sixty (60) days from the date of the notice. The notice shall be sent by mail to the taxpayer, or delivered by an agent of the commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's place of business or residence. However, if the taxpayer shall file a return and pay the tax shown to be due within sixty (60) days from the date of the assessment, the return and payment shall be accepted in lieu of the assessment."

§ 27-65-37. Assessment of tax by commissioner.

[Effective until January 1, 2015, this section will read:]

(1) If adequate records of the gross income or gross proceeds of sales are not maintained or invoices preserved as provided herein, or if an audit of the records of a taxpayer, or any return filed by him, or any other information discloses that taxes are due and unpaid, the commissioner shall make assessments of taxes, damages, and interest from any information available, which shall be prima facie correct. However, if in an audit of the records of a taxpayer it is determined that during the period being audited the taxpayer reported and paid tax in accordance with a method used during a prior period which had been audited by the commissioner and not found to result in any additional tax due, the commissioner shall be estopped from collecting any additional tax as a result of the use of this previously audited method for any period prior to notification by the commissioner or his agent during the current audit that use of the previously audited method would result in additional tax being due if it is determined, through all information available regarding this taxpayer, that:

(a) The method in issue was previously audited by the commissioner with no additional tax determined to be due under such method;

(b) The method under consideration in the current audit is the same method that was used in the prior audit;

(c) There has not been a statutory or regulatory change that would have resulted in additional tax being due under this method after the statutory or regulatory change; and

(d) The taxpayer detrimentally relied on the fact that this method had been previously audited and not found to result in additional tax.

(2) The commissioner shall give notice to the taxpayer of the assessments and demand payment of the tax, damages and interest within sixty (60) days from the date of the notice. The notice shall be sent by regular mail or delivered by an agent of the commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's residence or place of business.

(3) If the taxpayer shall fail or refuse to comply with the notice of assessment or shall fail to petition for a hearing, the commissioner shall proceed as provided in Section 27-65-39.

[Effective from and after January 1, 2015, this section will read:]

(1) If adequate records of the gross income or gross proceeds of sales are not maintained or invoices preserved as provided herein, or if an audit of the

records of a taxpayer, or any return filed by him, or any other information discloses that taxes are due and unpaid, the commissioner shall make assessments of taxes, damages, and interest from any information available, which shall be prima facie correct. However, if in an audit of the records of a taxpayer it is determined that during the period being audited the taxpayer reported and paid tax in accordance with a method used during a prior period which had been audited by the commissioner and not found to result in any additional tax due, the commissioner shall be estopped from collecting any additional tax as a result of the use of this previously audited method for any period prior to notification by the commissioner or his agent during the current audit that use of the previously audited method would result in additional tax being due if it is determined, through all information available regarding this taxpayer, that:

(a) The method in issue was previously audited by the commissioner with no additional tax determined to be due under such method;

(b) The method under consideration in the current audit is the same method that was used in the prior audit;

(c) There has not been a statutory or regulatory change that would have resulted in additional tax being due under this method after the statutory or regulatory change; and

(d) The taxpayer detrimentally relied on the fact that this method had been previously audited and not found to result in additional tax.

(2) The commissioner shall give notice to the taxpayer of the assessments and demand payment of the tax, damages and interest within sixty (60) days from the date the commissioner mailed or hand delivered the notice. The notice shall be sent by regular first class mail or delivered by an agent of the commissioner. In the case of an individual, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to the taxpayer, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the taxpayer's residence. In the case of a partnership, the notice shall be sent by mail to the partnership or delivered by an agent of the commissioner to any partner, to a manager or general agent at the taxpayer's place of business or to someone above the age of sixteen (16) years at the residence of any partner. In the case of a corporation, limited liability company, joint venture, association, estate, trust or other group or combination acting as a unit, including any government entity, the notice shall be sent by mail to the taxpayer or delivered by an agent of the commissioner to an officer of the entity, to someone above the age of sixteen (16) years at the residence of an officer of the entity or to a manager or general agent at the taxpayer's place of business.

(3) If the taxpayer shall fail or refuse to comply with the notice of assessment or shall fail to petition for a hearing, the commissioner shall proceed as provided in Section 27-65-39.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess, ch. 106, § 1; Laws, 1958,

ch. 576; Laws, 2007, ch. 359, § 2; Laws, 2009, ch. 492, § 104; Laws, 2010, ch. 323, § 3; Laws, 2013, ch. 470, § 6; Laws, 2014, ch. 476, § 13, effective from and after January 1, 2015.

Editor's Note — Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2013 amendment inserted subsection designators; added the last sentence in (1); added (1)(a) through (d); and made a minor stylistic change.

The 2014 amendment (ch. 476), effective January 1, 2015, rewrote (2), which formerly read "The commissioner shall give notice to the taxpayer of the assessments and demand payment of the tax, damages and interest within sixty (60) days from the date of the notice. The notice shall be sent by regular mail or delivered by an agent of the commissioner either to the taxpayer or someone of suitable age and discretion at the taxpayer's residence or place of business."

§ 27-65-39. Penalties for deficient or delinquent return.

[Effective until January 1, 2015, this section will read:]

If any part of the deficient or delinquent tax is due to negligence or failure to comply with the provisions of this chapter or authorized rules and regulations promulgated under the provisions of this chapter without intent to defraud, there may be added as damages ten percent (10%) of the total amount of deficiency or delinquency in the tax, or interest at the rate of one percent (1%) per month, or both, from the date such tax was due until paid, and the tax, damages and interest shall become payable upon notice and demand by the commissioner.

If any part of the deficient or delinquent tax is due to intentional disregard of the provisions of this chapter or authorized rules and regulations promulgated under the provisions of this chapter, or to fraud with intent to evade the law, then there shall be added as damages fifty percent (50%) of the total amount of the deficiency or delinquency of the tax, and in such case the whole amount of tax unpaid, including the charges so added, shall become due and payable upon notice and demand by the commissioner, and interest of one percent (1%) per month of the tax shall be added from the date such tax was due until paid.

[Effective from and after January 1, 2015, this section will read:]

If any part of the deficient or delinquent tax is due to negligence or failure to comply with the provisions of this chapter or authorized rules and regulations promulgated under the provisions of this chapter without intent to defraud, there may be added as damages ten percent (10%) of the total amount of deficiency or delinquency in the tax, or interest at the rate of one percent (1%) per month, except as otherwise provided in this section, or both, from the date such tax was due until paid, and the tax, damages and interest shall become payable upon notice and demand by the commissioner.

If any part of the deficient or delinquent tax is due to intentional disregard of the provisions of this chapter or authorized rules and regulations promulgated under the provisions of this chapter, or is due to fraud with intent to evade the law, then there may be added as damages fifty percent (50%) of the total amount of the deficiency or delinquency of the tax, and in such case the whole amount of tax unpaid, including the charges so added, shall become due and payable upon notice and demand by the commissioner, and interest of one percent (1%) per month, except as otherwise provided in this section, of the total amount of the deficiency or delinquency of the tax may be added from the date such tax was due until paid. Provided, however, no such damages shall be added if the taxpayer establishes reasonable cause for his negligence or failure to comply. A taxpayer's purported disregard of instructions given through an audit shall not be a basis for the imposition of the penalty provided in this paragraph.

For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(a) Nine-tenths of one percent (9/10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(b) Eight-tenths of one percent (8/10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(c) Seven-tenths of one percent (7/10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(d) Six-tenths of one percent (6/10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(e) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

SOURCES: Codes, 1942, § 10119; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1938, ch. 113; Laws, 1942, ch. 138; Laws, 1944, ch. 129, § 7; Laws, 1952, ch. 403, § 4; Laws, 1955, Ex Sess, ch. 106, § 1; Laws, 1958, ch. 576; Laws, 2012, ch. 566, § 7; Laws, 2014, ch. 476, § 14, effective from and after January 1, 2015.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2012 amendment deleted "for the first offense, fifteen percent (15%) for the second offense, twenty-five percent (25%) for the third offense, and fifty percent (50%) for any subsequent offense" following "ten percent (10%)" and made a minor stylistic change in the first paragraph; and deleted the former last paragraph which read: "If the deficient or delinquent tax is not paid pursuant to the commissioner's notice and it is necessary to resort to the issuance of the notice of tax lien or a warrant, the damages may be increased to fifteen percent (15%) for the first offense, twenty-five percent (25%) for the second offense and fifty percent (50%) for any subsequent offense."

The 2014 amendment (ch. 476), effective January 1, 2015, inserted "except as otherwise provided in this section" in the first paragraph; in the second paragraph

inserted "is due" preceding "to fraud," twice substituted "may be" for "shall be," inserted "except as otherwise provided in this section, of the total amount of the deficiency or delinquency" in the first sentence, and added the last two sentences; added the third paragraph and (a) through (e).

§ 27-65-42. Statute of limitations.

(1) The amount of taxes due on any return which has been filed as required by this chapter shall be determined and assessed within thirty-six (36) months from the date the return was filed except as otherwise provided in this section and Section 27-65-55.

(2) When an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified of the examination, either by certified mail or personal delivery by an agent of the commissioner, within the thirty-six-month examination period provided for in subsection (1) of this section, the determination of the correct tax liability shall be made by the commissioner within one (1) year after the expiration of the thirty-six-month examination period; however, this limitation shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine, and assess at any time the estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this chapter, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide documentation

for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

SOURCES: Codes, 1942, § 10119(e); Laws, 1972, ch. 405, § 1; Laws, 1993, ch. 563, § 5; Laws, 2010, ch. 386, § 4; Laws, 2013, ch. 470, § 3, eff from and after Jan. 1, 2013.

Editor's Note — Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides: "SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective."

Amendment Notes — The 2013 amendment designated the former first paragraph as (1), and therein deleted "and no suit or other proceedings for the collection of any taxes due shall be begun after the expiration of thirty six (36) months from the date such return was filed" preceding "except as otherwise provided"; deleted the former second paragraph which read: "However, when an examination of a taxpayer's records to verify returns made under this chapter has been initiated and the taxpayer notified thereof, either by certified mail or personal delivery by an agent of the commissioner, within the thirty six month examination period provided herein, the determination of the correct tax liability may be made by the commission after the expiration of said thirty six month examination period, provided that said determination shall be made with reasonable promptness and diligence. When a false or fraudulent return has been filed with the intent to evade tax or in case no return has been filed, the amount of tax due may be determined, assessed and collected and suit or proceedings for the collection of the tax may be begun at any time after it becomes due"; added (2) and (3); and made minor stylistic changes.

§ 27-65-75. Distribution of sales taxes, contractor taxes, motor fuels taxes, and other revenue collected under this chapter.

On or before the fifteenth day of each month, the revenue collected under the provisions of this chapter during the preceding month shall be paid and distributed as follows:

(1)(a) On or before August 15, 1992, and each succeeding month thereafter through July 15, 1993, eighteen percent (18%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities within a municipal corporation shall be allocated for distribution to the municipality

and paid to the municipal corporation. On or before August 15, 1993, and each succeeding month thereafter, eighteen and one-half percent (18-½%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3), 27-65-21 and 27-65-24, on business activities within a municipal corporation shall be allocated for distribution to the municipality and paid to the municipal corporation.

A municipal corporation, for the purpose of distributing the tax under this subsection, shall mean and include all incorporated cities, towns and villages.

Monies allocated for distribution and credited to a municipal corporation under this paragraph may be pledged as security for a loan if the distribution received by the municipal corporation is otherwise authorized or required by law to be pledged as security for such a loan.

In any county having a county seat that is not an incorporated municipality, the distribution provided under this subsection shall be made as though the county seat was an incorporated municipality; however, the distribution to the municipality shall be paid to the county treasury in which the municipality is located, and those funds shall be used for road, bridge and street construction or maintenance in the county.

(b) On or before August 15, 2006, and each succeeding month thereafter, eighteen and one-half percent (18-½%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on business activities on the campus of a state institution of higher learning or community or junior college whose campus is not located within the corporate limits of a municipality, shall be allocated for distribution to the state institution of higher learning or community or junior college and paid to the state institution of higher learning or community or junior college.

(2) On or before September 15, 1987, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, One Million One Hundred Twenty-five Thousand Dollars ($1,125,000.00) shall be allocated for distribution to municipal corporations as defined under subsection (1) of this section in the proportion that the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in each such municipality during the preceding fiscal year bears to the total gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in municipalities statewide during the preceding fiscal year. The Department of Revenue shall require all distributors of gasoline and diesel fuel to report to the department monthly the total number of gallons of gasoline and diesel fuel sold by them to consumers and retailers in each municipality during the preceding month. The Department of Revenue shall have the authority to promulgate such rules and regulations as is necessary to determine the number of gallons of gasoline and diesel fuel sold by distributors to consumers and retailers in

each municipality. In determining the percentage allocation of funds under this subsection for the fiscal year beginning July 1, 1987, and ending June 30, 1988, the Department of Revenue may consider gallons of gasoline and diesel fuel sold for a period of less than one (1) fiscal year. For the purposes of this subsection, the term "fiscal year" means the fiscal year beginning July 1 of a year.

(3) On or before September 15, 1987, and on or before the fifteenth day of each succeeding month, until the date specified in Section 65-39-35, the proceeds derived from contractors' taxes levied under Section 27-65-21 on contracts for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97 shall, except as otherwise provided in Section 31-17-127, be deposited into the State Treasury to the credit of the State Highway Fund to be used to fund that highway program. The Mississippi Department of Transportation shall provide to the Department of Revenue such information as is necessary to determine the amount of proceeds to be distributed under this subsection.

(4) On or before August 15, 1994, and on or before the fifteenth day of each succeeding month through July 15, 1999, from the proceeds of gasoline, diesel fuel or kerosene taxes as provided in Section 27-5-101(a)(ii)1, Four Million Dollars ($4,000,000.00) shall be deposited in the State Treasury to the credit of a special fund designated as the "State Aid Road Fund," created by Section 65-9-17. On or before August 15, 1999, and on or before the fifteenth day of each succeeding month, from the total amount of the proceeds of gasoline, diesel fuel or kerosene taxes apportioned by Section 27-5-101(a)(ii)1, Four Million Dollars ($4,000,000.00) or an amount equal to twenty-three and one-fourth percent (23-¼%) of those funds, whichever is the greater amount, shall be deposited in the State Treasury to the credit of the "State Aid Road Fund," created by Section 65-9-17. Those funds shall be pledged to pay the principal of and interest on state aid road bonds heretofore issued under Sections 19-9-51 through 19-9-77, in lieu of and in substitution for the funds previously allocated to counties under this section. Those funds may not be pledged for the payment of any state aid road bonds issued after April 1, 1981; however, this prohibition against the pledging of any such funds for the payment of bonds shall not apply to any bonds for which intent to issue those bonds has been published for the first time, as provided by law before March 29, 1981. From the amount of taxes paid into the special fund under this subsection and subsection (9) of this section, there shall be first deducted and paid the amount necessary to pay the expenses of the Office of State Aid Road Construction, as authorized by the Legislature for all other general and special fund agencies. The remainder of the fund shall be allocated monthly to the several counties in accordance with the following formula:

(a) One-third (⅓) shall be allocated to all counties in equal shares;

(b) One-third (⅓) shall be allocated to counties based on the proportion that the total number of rural road miles in a county bears to the total number of rural road miles in all counties of the state; and

(c) One-third (⅓) shall be allocated to counties based on the proportion that the rural population of the county bears to the total rural population in all counties of the state, according to the latest federal decennial census.

For the purposes of this subsection, the term "gasoline, diesel fuel or kerosene taxes" means such taxes as defined in paragraph (f) of Section 27-5-101.

The amount of funds allocated to any county under this subsection for any fiscal year after fiscal year 1994 shall not be less than the amount allocated to the county for fiscal year 1994.

Any reference in the general laws of this state or the Mississippi Code of 1972 to Section 27-5-105 shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75.

(5) One Million Six Hundred Sixty-six Thousand Six Hundred Sixty-six Dollars ($1,666,666.00) each month shall be paid into the special fund known as the "State Public School Building Fund" created and existing under the provisions of Sections 37-47-1 through 37-47-67. Those payments into that fund are to be made on the last day of each succeeding month hereafter.

(6) An amount each month beginning August 15, 1983, through November 15, 1986, as specified in Section 6 of Chapter 542, Laws of 1983, shall be paid into the special fund known as the Correctional Facilities Construction Fund created in Section 6 of Chapter 542, Laws of 1983.

(7) On or before August 15, 1992, and each succeeding month thereafter through July 15, 2000, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited by the department into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35. On or before August 15, 2000, and each succeeding month thereafter, two and two hundred sixty-six one-thousandths percent (2.266%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the School Ad Valorem Tax Reduction Fund created under Section 37-61-35 until such time that the total amount deposited into the fund during a fiscal year equals Forty-two Million Dollars ($42,000,000.00). Thereafter, the amounts diverted under this subsection (7) during the fiscal year in excess of Forty-two Million Dollars ($42,000,000.00) shall be deposited into the Education Enhancement Fund created under Section 37-61-33 for appropriation by the Legislature as other education needs and shall not be subject to the percentage appropriation requirements set forth in Section 37-61-33.

(8) On or before August 15, 1992, and each succeeding month thereafter, nine and seventy-three one-thousandths percent (9.073%) of the total sales tax revenue collected during the preceding month under the provisions of this chapter, except that collected under the provisions of Section 27-65-17(2), shall be deposited into the Education Enhancement Fund created under Section 37-61-33.

(9) On or before August 15, 1994, and each succeeding month thereafter, from the revenue collected under this chapter during the preceding month, Two Hundred Fifty Thousand Dollars ($250,000.00) shall be paid into the State Aid Road Fund.

(10) On or before August 15, 1994, and each succeeding month thereafter through August 15, 1995, from the revenue collected under this chapter during the preceding month, Two Million Dollars ($2,000,000.00) shall be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(11) Notwithstanding any other provision of this section to the contrary, on or before February 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(2) and the corresponding levy in Section 27-65-23 on the rental or lease of private carriers of passengers and light carriers of property as defined in Section 27-51-101 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(12) Notwithstanding any other provision of this section to the contrary, on or before August 15, 1995, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-17(1) on retail sales of private carriers of passengers and light carriers of property, as defined in Section 27-51-101 and the corresponding levy in Section 27-65-23 on the rental or lease of these vehicles, shall be deposited, after diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(13) On or before July 15, 1994, and on or before the fifteenth day of each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-22 that is derived from activities held on the Mississippi State Fairgrounds Complex shall be paid into a special fund that is created in the State Treasury and shall be expended upon legislative appropriation solely to defray the costs of repairs and renovation at the Trade Mart and Coliseum.

(14) On or before August 15, 1998, and each succeeding month thereafter through July 15, 2005, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited in an amount not to exceed Two Million Dollars ($2,000,000.00) into the special fund created under Section 69-37-39. On or before August 15, 2007, and each succeeding month thereafter through July 15, 2010, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited in an amount not to exceed Two Million Dollars ($2,000,000.00) into the special fund created under Section 69-37-39 until all debts or other obligations incurred by the Certified Cotton Growers Organization under the Mississippi Boll Weevil Management Act before January 1, 2007, are satisfied in full. On or before

August 15, 2010, and each succeeding month thereafter through July 15, 2011, fifty percent (50%) of that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited into the special fund created under Section 69-37-39 until such time that the total amount deposited into the fund during a fiscal year equals One Million Dollars ($1,000,000.00). On or before August 15, 2011, and each succeeding month thereafter, that portion of the avails of the tax imposed in Section 27-65-23 that is derived from sales by cotton compresses or cotton warehouses and that would otherwise be paid into the General Fund shall be deposited into the special fund created under Section 69-37-39 until such time that the total amount deposited into the fund during a fiscal year equals One Million Dollars ($1,000,000.00).

(15) Notwithstanding any other provision of this section to the contrary, on or before September 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-19(1)(d)(i)2, and 27-65-19(d)(i)3 shall be deposited, without diversion, into the Telecommunications Ad Valorem Tax Reduction Fund established in Section 27-38-7.

(16)(a) On or before August 15, 2000, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a project as defined in Section 57-30-1 shall be deposited, after all diversions except the diversion provided for in subsection (1) of this section, into the Sales Tax Incentive Fund created in Section 57-30-3.

(b) On or before August 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-26-1 through 57-26-5, shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Project Sales Tax Incentive Fund created in Section 57-26-3.

(17) Notwithstanding any other provision of this section to the contrary, on or before April 15, 2002, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under Section 27-65-23 on sales of parking services of parking garages and lots at airports shall be deposited, without diversion, into the special fund created under Section 27-5-101(d).

(18) [Repealed]

(19)(a) On or before August 15, 2005, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of this chapter on the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and the revenue collected on the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections

57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall, except as otherwise provided in this subsection (19), be deposited, after all diversions, into the Redevelopment Project Incentive Fund as created in Section 57-91-9.

(b) For a municipality participating in the Economic Redevelopment Act created in Sections 57-91-1 through 57-91-11, the diversion provided for in subsection (1) of this section attributable to the gross proceeds of sales of a business enterprise located within a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11, and attributable to the gross proceeds of sales from sales made to a business enterprise located in a redevelopment project area under the provisions of Sections 57-91-1 through 57-91-11 (provided that such sales made to a business enterprise are made on the premises of the business enterprise), shall be deposited into the Redevelopment Project Incentive Fund as created in Section 57-91-9, as follows:

(i) For the first six (6) years in which payments are made to a developer from the Redevelopment Project Incentive Fund, one hundred percent (100%) of the diversion shall be deposited into the fund;

(ii) For the seventh year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, eighty percent (80%) of the diversion shall be deposited into the fund;

(iii) For the eighth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, seventy percent (70%) of the diversion shall be deposited into the fund;

(iv) For the ninth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, sixty percent (60%) of the diversion shall be deposited into the fund; and

(v) For the tenth year in which such payments are made to a developer from the Redevelopment Project Incentive Fund, fifty percent (50%) of the funds shall be deposited into the fund.

(20) On or before January 15, 2007, and each succeeding month thereafter, eighty percent (80%) of the sales tax revenue collected during the preceding month under the provisions of this chapter from the operation of a tourism project under the provisions of Sections 57-28-1 through 57-28-5 shall be deposited, after the diversions required in subsections (7) and (8) of this section, into the Tourism Sales Tax Incentive Fund created in Section 57-28-3.

(21)(a) On or before April 15, 2007, and each succeeding month thereafter through June 15, 2013, One Hundred Fifty Thousand Dollars ($150,000.00) of the sales tax revenue collected during the preceding month under the provisions of this chapter shall be deposited into the MMEIA Tax Incentive Fund created in Section 57-101-3.

(b) On or before July 15, 2013, and each succeeding month thereafter, One Hundred Fifty Thousand Dollars ($150,000.00) of the sales tax revenue collected during the preceding month under the provisions of this

chapter shall be deposited into the Mississippi Development Authority Job Training Grant Fund created in Section 57-1-451.

(22) Notwithstanding any other provision of this section to the contrary, on or before August 15, 2009, and each succeeding month thereafter, the sales tax revenue collected during the preceding month under the provisions of Section 27-65-201 shall be deposited, without diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

(23) The remainder of the amounts collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Fund.

(24) It shall be the duty of the municipal officials of any municipality that expands its limits, or of any community that incorporates as a municipality, to notify the commissioner of that action thirty (30) days before the effective date. Failure to so notify the commissioner shall cause the municipality to forfeit the revenue that it would have been entitled to receive during this period of time when the commissioner had no knowledge of the action. If any funds have been erroneously disbursed to any municipality or any overpayment of tax is recovered by the taxpayer, the commissioner may make correction and adjust the error or overpayment with the municipality by withholding the necessary funds from any later payment to be made to the municipality.

SOURCES: Codes, 1942, § 10127; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1936, ch. 158; Laws, 1950, ch. 391; Laws, 1952, ch. 289; Laws, 1955, Ex Sess, ch. 107; Laws, 1960, ch. 366; Laws, 1962, ch. 599, § 3; Laws, 1966, ch. 652, § 1; Laws, 1968, ch. 588, § 11; Laws, 1972, ch. 535, § 1; Laws, 1974, ch. 509, § 1; Laws, 1978, ch. 503, § 1; Laws, 1979, chs. 302, § 10, 453, § 1; Laws, 1981, ch. 464, § 20; Laws, 1983, ch. 542, § 1; Laws, 1984, ch. 488, § 178; Laws, 1985, ch. 537, § 1; Laws, 1987, ch. 322, § 28; Laws, 1987, ch. 527, § 1; Laws, 1988, ch. 353; Laws 1992, ch. 419, § 8; Laws 1992, ch. 565, § 1; Laws 1993, ch. 473, § 2; Laws 1994, ch. 557, § 12; Laws 1994, ch. 563, § 8; Laws 1994, ch. 570, § 20; Laws 1994, ch. 565, § 1; Laws 1995, ch. 521, § 5; Laws 1995, ch. 563, § 22; Laws 1997, ch. 566, § 1; Laws 1997, ch. 612, § 26; Laws 1998, ch. 584, § 2; Laws, 1999, ch. 535, § 1; Laws, 1999, ch. 575, § 7; Laws, 2000, ch. 303, § 7; Laws, 2000, ch. 616, § 3; Laws, 2000, ch. 617, § 1; Laws, 2002, ch. 434, § 1; Laws, 2002, ch. 520, § 4; Laws, 2002, ch. 582, § 7; Laws, 2003, ch. 540, § 1; Laws, 2004, ch. 595, § 9; Laws, 2005, ch. 369, § 1; Laws, 2005, ch. 468, § 10; Laws, 2005, 2nd Ex Sess, ch. 2, § 4; Laws, 2005, 5th Ex Sess, ch. 12, § 5; Laws, 2006, ch. 365, § 1; Laws, 2006, 1st Ex Sess, ch. 2, § 7; Laws, 2007, ch. 303, § 26; Laws, 2007, ch. 493, § 1; Laws, 2007, ch. 562, § 1; Laws, 2007, ch. 574, § 4; Laws, 2007, 1st Ex Sess, ch. 1, § 16; Laws, 2009, ch. 562, § 4; Laws, 2010, ch. 449, § 10; Laws, 2010, ch. 459, § 1; Laws, 2011, ch. 432, § 1; Laws, 2013, ch. 447, § 3; Laws, 2013, ch. 537, § 3, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 3 of Chapter 447, Laws of 2013, effective from and after passage (approved March 25, 2013), amended this section. Section 3 of Chapter 537, Laws of 2013, effective from and after July 1, 2014 (approved April 23, 2013), also amended this section. As set out above, this section reflects the language of Section 3 of Chapter 537, Laws of 2013, which contains language that specifically provides that it supersedes § 27-65-75 as amended by Section 3 of Chapter 447.

Editor's Note — Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

Section 57-101-3 referred to in (21)(a), was repealed by Laws of 2013, ch. 447, § 24, effective July 1, 2013.

Amendment Notes — The 2011 amendment substituted "Department of Revenue" for "State Tax Commission" in the next-to-last sentence of (2); and substituted "Section 27-65-19(1)(e)(i)2, and 27-65-19(e)(i)3" for "Section 27-65-19(1)(f) and (g)(i)2" in (15).

The first 2013 amendment (ch. 447), effective March 25, 2013, substituted "paragraph" for "subsection" in the third paragraph of (1)(a); substituted "department" for "commission" in the first sentence of (7); in (21) designated the first paragraph as (a) and inserted "through June 15, 2013" therein and added (b).

The second 2013 amendment (ch. 537), effective July 1, 2014, substituted "27-65-19(1)(d)(i)2, and 27-65-19(d)(i)3" for "27-65-19(1)(e)(i)2, and 27-65-19(e)(i)3" preceding "shall be deposited" in (15).

§ 27-65-81. Returns confidential; release of certain information under certain circumstances.

(1) Applications, returns and information contained therein filed or furnished under this chapter shall be confidential, and except in accordance with proper judicial order, or as otherwise authorized by this section or as authorized by Section 27-4-3, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue or Department of Information Technology Services, or any former employee thereof, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed on any application, report or return required.

The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

(2) Such information contained on the application, returns or reports may be furnished to:

(a) Members and employees of the Department of Revenue and the income tax department thereof, for the purpose of checking, comparing and correcting returns;

(b) The Attorney General, or any other attorney representing the state in any action in respect to the amount of tax under the provisions of this chapter;

(c) The revenue department of other states or the federal government when said states or federal government grants a like comity to Mississippi.

(3) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department of Revenue, and the same prohibitions against disclosure which apply to the Department of Revenue shall apply to the State Auditor and his office.

(4) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(5) Information required by the University Research Center to prepare the analyses required by Sections 57-13-101 through 57-13-109 shall be furnished to the University Research Center upon request. It shall be unlawful for any officer or employee of the University Research Center to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

(6) Information required by the Mississippi Development Authority to prepare the reports required by Section 57-1-12.2 shall be furnished to the Mississippi Development Authority upon request. It shall be unlawful for any officer or employee of the Mississippi Development Authority to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the Mississippi Development Authority from the Department of Revenue other than as may be required by Section 57-1-12.2 in a report prepared pursuant to Section 57-1-12.2.

(7) Nothing in this section shall prohibit the Commissioner of Revenue from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16.

(8) The Department of Revenue is authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the

name, address, social security number, amount of income, amount of sales tax, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

SOURCES: Codes, 1942, §§ 10130, 10131; Laws, 1932, ch. 90; Laws, 1934, ch. 119; Laws, 1952, ch. 403, § 10; Laws, 1975, ch. 516, § 4; Laws, 1984, ch. 458, § 5: 1988, ch. 349, § 5; Laws, 2010, ch. 385, § 4; Laws, 2010, ch. 388, § 5; Laws, 2010, ch. 481, § 3; Laws, 2014, ch. 517, § 11, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (5) and (6), and redesignated the remaining subsections accordingly.

§ 27-65-101. Exemptions; industrial [Paragraph (1)(pp) repealed effective July 1, 2022].

(1) The exemptions from the provisions of this chapter which are of an industrial nature or which are more properly classified as industrial exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the United States or the State of Mississippi. No industrial exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent industrial exemption from the tax levied hereunder shall be provided by amendment to this section. No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21.

The tax levied by this chapter shall not apply to the following:

(a) Sales of boxes, crates, cartons, cans, bottles and other packaging materials to manufacturers and wholesalers for use as containers or shipping materials to accompany goods sold by said manufacturers or wholesalers where possession thereof will pass to the customer at the time of sale of the goods contained therein and sales to anyone of containers or shipping materials for use in ships engaged in international commerce.

(b) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) to a manufacturer for use directly in manufacturing or processing a product for sale or rental or repairing or reconditioning vessels or barges of fifty (50) tons load displacement and over. For the purposes of this exemption, electricity used directly in the electrolysis process in the production of sodium chlorate shall be considered a raw material. This exemption shall not apply to any property used as fuel except to the extent that such fuel comprises by-products which have no market value.

(c) The gross proceeds of sales of dry docks, offshore drilling equipment for use in oil or natural gas exploration or production, vessels or barges of fifty (50) tons load displacement and over, when the vessels or barges are sold by the manufacturer or builder thereof. In addition to other types of equipment, offshore drilling equipment for use in oil or natural gas explo-

ration or production shall include aircraft used predominately to transport passengers or property to or from offshore oil or natural gas exploration or production platforms or vessels, and engines, accessories and spare parts for such aircraft.

(d) Sales to commercial fishermen of commercial fishing boats of over five (5) tons load displacement and not more than fifty (50) tons load displacement as registered with the United States Coast Guard and licensed by the Mississippi Commission on Marine Resources.

(e) The gross income from repairs to vessels and barges engaged in foreign trade or interstate transportation.

(f) Sales of petroleum products to vessels or barges for consumption in marine international commerce or interstate transportation businesses.

(g) Sales and rentals of rail rolling stock (and component parts thereof) for ultimate use in interstate commerce and gross income from services with respect to manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof).

(h) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) used or consumed directly in manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof). This exemption shall not apply to any property used as fuel.

(i) Sales of machinery or tools or repair parts therefor or replacements thereof, fuel or supplies used directly in manufacturing, converting or repairing ships, vessels or barges of three thousand (3,000) tons load displacement and over, but not to include office and plant supplies or other equipment not directly used on the ship, vessel or barge being built, converted or repaired. For purposes of this exemption, "ships, vessels or barges" shall not include floating structures described in Section 27-65-18.

(j) Sales of tangible personal property to persons operating ships in international commerce for use or consumption on board such ships. This exemption shall be limited to cases in which procedures satisfactory to the commissioner, ensuring against use in this state other than on such ships, are established.

(k) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-51-5, which are located in a county or portion thereof designated as an enterprise zone pursuant to Sections 57-51-1 through 57-51-15.

(*l*) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-54-5.

(m) Income from storage and handling of perishable goods by a public storage warehouse.

(n) The value of natural gas lawfully injected into the earth for cycling, repressuring or lifting of oil, or lawfully vented or flared in connection with the production of oil; however, if any gas so injected into the earth is sold for such purposes, then the gas so sold shall not be exempt.

(o) The gross collections from self-service commercial laundering, drying, cleaning and pressing equipment.

(p) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified companies, certified as such by the Mississippi Development Authority under Section 57-53-1.

(q) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Three areas (as such term is defined in Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this paragraph (q).

(r)(i) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi and creating a minimum of twenty (20) jobs at the new headquarters in this state. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this subparagraph (i).

(ii) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company expanding or making additions after January 1, 2013, to its national or regional headquarters within the State of Mississippi and creating a minimum of twenty (20) new jobs at the headquarters as a result of the expansion or additions. The Department of Revenue shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this subparagraph (ii).

(s) The gross proceeds from the sale of semitrailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles if exported from this state within forty-eight (48) hours and registered and first used in another state.

(t) Gross income from the storage and handling of natural gas in underground salt domes and in other underground reservoirs, caverns, structures and formations suitable for such storage.

(u) Sales of machinery and equipment to nonprofit organizations if the organization:

(i) Is tax exempt pursuant to Section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(ii) Assists in the implementation of the contingency plan or area contingency plan, and which is created in response to the requirements of Title IV, Subtitle B of the Oil Pollution Act of 1990, Public Law 101-380; and

(iii) Engages primarily in programs to contain, clean up and otherwise mitigate spills of oil or other substances occurring in the United States coastal and tidal waters.

For purposes of this exemption, "machinery and equipment" means any ocean-going vessels, barges, booms, skimmers and other capital equipment used primarily in the operations of nonprofit organizations referred to herein.

(v) Sales or leases of materials and equipment to approved business enterprises as provided under the Growth and Prosperity Act.

(w) From and after July 1, 2001, sales of pollution control equipment to manufacturers or custom processors for industrial use. For the purposes of this exemption, "pollution control equipment" means equipment, devices, machinery or systems used or acquired to prevent, control, monitor or reduce air, water or groundwater pollution, or solid or hazardous waste as required by federal or state law or regulation.

(x) Sales or leases to a manufacturer of motor vehicles or powertrain components operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxii) of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacture of motor vehicles or motor vehicle parts or used to provide climate control for manufacturing areas.

(y) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi), Section 57-75-5(f)(xxii) or Section 57-75-5(f)(xxviii) and any other sales or leases required to establish or operate such project.

(z) Sales of component materials and equipment to a business enterprise as provided under Section 57-64-33.

(aa) The gross income from the stripping and painting of commercial aircraft engaged in foreign or interstate transportation business.

(bb) [Repealed]

(cc) Sales or leases to an enterprise owning or operating a project that has been designated by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f) (xviii) of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacturing/production operations of the project or used to provide climate control for manufacturing/production areas.

(dd) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise owning or operating a project that has been designated by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xviii) and any other sales or leases required to establish or operate such project.

(ee) Sales of parts used in the repair and servicing of aircraft not registered in Mississippi engaged exclusively in the business of foreign or interstate transportation to businesses engaged in aircraft repair and maintenance.

(ff) Sales of component materials used in the construction of a facility, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to a permanent business enterprise operating a data/information enterprise in Tier Three areas (as such areas are designated in accordance with Section 57-73-21), meeting minimum criteria established by the Mississippi Development Authority.

(gg) Sales of component materials used in the construction of a facility, or any addition or improvement thereto, and sales of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the facility or any addition or improvement thereto, to technology intensive enterprises for industrial purposes in Tier Three areas (as such areas are designated in accordance with Section 57-73-21), as certified by the Department of Revenue. For purposes of this paragraph, an enterprise must meet the criteria provided for in Section 27-65-17(1)(f) in order to be considered a technology intensive enterprise.

(hh) Sales of component materials used in the replacement, reconstruction or repair of a building or facility that has been destroyed or sustained extensive damage as a result of a disaster declared by the Governor, sales of machinery and equipment to be used therein to replace machinery or equipment damaged or destroyed as a result of such disaster, including, but not limited to, manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and

which is not by its nature intended to be housed within a building structure, to enterprises or companies that were eligible for the exemptions authorized in paragraph (q), (r), (ff) or (gg) of this subsection during initial construction of the building that was destroyed or damaged, which enterprises or companies are certified by the Department of Revenue as being eligible for the exemption granted in this paragraph.

(ii) Sales of software or software services transmitted by the Internet to a destination outside the State of Mississippi where the first use of such software or software services by the purchaser occurs outside the State of Mississippi.

(jj) Gross income of public storage warehouses derived from the temporary storage of raw materials that are to be used in an eligible facility as defined in Section 27-7-22.35.

(kk) Sales of component building materials and equipment for initial construction of facilities or expansion of facilities as authorized under Sections 57-113-1 through 57-113-7 and Sections 57-113-21 through 57-113-27.

(*ll*) Sales and leases of machinery and equipment acquired in the initial construction to establish facilities as authorized in Sections 57-113-1 through 57-113-7.

(mm) Sales and leases of replacement hardware, software or other necessary technology to operate a data center as authorized under Sections 57-113-21 through 57-113-27.

(nn) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of the construction of the facility, to be used in the facility, to permanent business enterprises operating a facility producing renewable crude oil from biomass harvested or produced, in whole or in part, in Mississippi, which businesses meet minimum criteria established by the Mississippi Development Authority. As used in this paragraph, the term "biomass" shall have the meaning ascribed to such term in Section 57-113-1.

(oo) Sales of supplies, equipment and other personal property to an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is the host organization coordinating a professional golf tournament played or to be played in this state and the supplies, equipment or other personal property will be used for purposes related to the golf tournament and related activities.

(pp) Sales of materials used in the construction of a health care industry facility, as defined in Section 57-117-3, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-117-3. This paragraph shall be repealed from and after July 1, 2022.

(qq) Sales or leases to a manufacturer of automotive parts operating a project that has been certified by the Mississippi Major Economic Impact

Authority as a project as defined in Section 57-75-5(f)(xxviii) of machinery and equipment; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal, nitrogen and natural gas used directly in the manufacture of automotive parts or used to provide climate control for manufacturing areas.

(rr) Gross collections derived from guided tours on any navigable waters of this state, which include providing accommodations, guide services and/or related equipment operated by or under the direction of the person providing the tour, for the purposes of outdoor tourism. The exemption provided in this paragraph (rr) does not apply to the sale of tangible personal property by a person providing such tours.

(ss) Retail sales of truck-tractors and semitrailers used in interstate commerce and registered under the International Registration Plan (IRP) or any similar reciprocity agreement or compact relating to the proportional registration of commercial vehicles entered into as provided for in Section 27-19-143.

(2) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted in this subsection, shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter.

(3) Sales of component materials used in the construction of a facility, or any addition or improvement thereon, and sales or leases of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to a permanent business enterprise operating a data/information enterprise in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses meet minimum criteria established by the Mississippi Development Authority, shall be exempt from one-half (½) of the taxes imposed on such transaction under this chapter.

(4) Sales of component materials used in the construction of a facility, or any addition or improvement thereto, and sales of machinery and equipment not later than three (3) months after the completion of construction of the facility, or any addition or improvement thereto, to be used in the building or any addition or improvement thereto, to technology intensive enterprises for industrial purposes in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the Department of Revenue as being eligible for the exemption granted

in this subsection, shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter. For purposes of this subsection, an enterprise must meet the criteria provided for in Section 27-65-17(1)(f) in order to be considered a technology intensive enterprise.

(5)(a) For purposes of this subsection:

(i) "Telecommunications enterprises" shall have the meaning ascribed to such term in Section 57-73-21;

(ii) "Tier One areas" mean counties designated as Tier One areas pursuant to Section 57-73-21;

(iii) "Tier Two areas" mean counties designated as Tier Two areas pursuant to Section 57-73-21;

(iv) "Tier Three areas" mean counties designated as Tier Three areas pursuant to Section 57-73-21; and

(v) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty-four (384) kilobits per second in at least one (1) direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

(b) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2020, that is installed in Tier One areas and used in the deployment of broadband technologies shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter.

(c) Sales of equipment to telecommunications enterprises after June 30, 2003, and before July 1, 2020, that is installed in Tier Two and Tier Three areas and used in the deployment of broadband technologies shall be exempt from the taxes imposed on such transactions under this chapter.

(6) Sales of component materials used in the replacement, reconstruction or repair of a building that has been destroyed or sustained extensive damage as a result of a disaster declared by the Governor, sales of machinery and equipment to be used therein to replace machinery or equipment damaged or destroyed as a result of such disaster, including, but not limited to, manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, to enterprises that were eligible for the partial exemptions provided for in subsections (2), (3) and (4) of this section during initial construction of the building that was destroyed or damaged, which enterprises are certified by the Department of Revenue as being eligible for the partial exemption granted in this subsection, shall be exempt from one-half (½) of the taxes imposed on such transactions under this chapter.

SOURCES: Laws, 1978, ch. 347, § 3; Laws, 1980, ch. 500, § 1; Laws, 1982, 1st Ex Sess, ch. 17, § 41; Laws, 1983, ch. 475, § 10, ch. 491, § 10, ch. 546, § 3; Laws, 1984, ch. 381, § 7; Laws, 1984, ch. 458, § 6; Laws, 1985, ch. 516, § 3; Laws,

1986, ch. 410, § 3; Laws, 1987, ch. 454, § 1; Laws, 1989, ch. 524, § 20; Laws, 1990, ch. 525, § 1; Laws, 1992, ch. 462, § 2; Laws, 1992, ch. 548 § 2; Laws, 1994, ch. 510, § 1; Laws, 1998, ch. 526, § 1; Laws, 1999, ch. 450, § 2; Laws, 2000, ch. 516, § 5; Laws, 2000, 2nd Ex Sess, ch. 1, § 51; Laws, 2000, 3rd Ex Sess, ch. 1, § 14; Laws, 2002, ch. 464, § 8; Laws, 2003, ch. 464, § 1; Laws, 2003, ch. 520, § 5; Laws, 2004, ch. 469, § 2; Laws, 2004, ch. 528, § 6; Laws, 2005, ch. 315, § 4; Laws, 2005, ch. 486, § 2; Laws, 2005, 3rd Ex Sess, ch. 1 § 65; Laws, 2007, ch. 303, § 15; Laws, 2007, ch. 503, § 1; Laws, 2007, 1st Ex Sess, ch. 1, § 12; Laws, 2008, ch. 439, § 1; Laws, 2009, ch. 512, § 2; Laws, 2010, ch. 533, § 23; Laws, 2010, 2nd Ex Sess, ch. 30, § 5; Laws, 2011, ch. 453, § 3; Laws, 2012, ch. 520, § 9; Laws, 2013, ch. 462, § 1; Laws, 2013, ch. 571, § 1; Laws, 2013, 1st Ex Sess, ch. 1, § 10; Laws, 2014, ch. 429, § 1; Laws, 2014, ch. 505, § 1; Laws, 2014, ch. 528, § 2, effective from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of Chapter 462, Laws of 2013, effective from and after July 1, 2013 (approved March 25, 2013), amended this section. Section 1 of Chapter 571, Laws of 2013, effective from and after passage (approved April 26, 2013), also amended this section. Section 1 of Chapter 571, Laws of 2013, contained language that specifically provided that it superseded § 27-65-101 as amended by Chapter 462, Laws of 2013. Subsequently, § 27-65-101 was amended by Section 1 of Chapter 1, 1st Extraordinary Session, Laws of 2013, effective from and after passage (approved April 28, 2013). As set out above, this section reflects the language of Section 1 of Chapter 1, 1st Extraordinary Session, Laws of 2013.

Section 1 of ch. 429, Laws of 2014, effective from and after July 1, 2014 (approved March 24, 2014), amended this section. Section 1 of ch. 505, Laws of 2014, effective from and after July 1, 2014 (approved April 21, 2014), and Section 2 of ch. 528, Laws of 2014, effective from and after July 1, 2014 (approved April 23, 2014), also amended this section. As set out above, this section reflects the language of all amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Editor's Note — Paragraph (bb) of subsection (1), which exempted the sales of production items used in the production of motion pictures from the tax levied by this chapter, was repealed by its own terms, effective July 1, 2011.

Laws of 2014, ch. 505, § 3, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2014, ch. 528, § 4, provides:

"SECTION 4. The Division of Tourism of the Mississippi Development Authority shall prepare and file a report with the Legislature regarding the impact of the tax exemption provided in Section 27-65-101(rr) on the tourism industry in this state and other economic development activities. The report shall be filed with the Clerk of the Mississippi House of Representatives and Secretary of the Mississippi State Senate not later than December 31, 2015."

Amendment Notes — The 2011 amendment added the last sentence in (1)(bb), which is a repealer for paragraph (bb), effective July 1, 2011; added (1)(oo).

The 2012 amendment provided for two versions of the section. In the first version effective through June 30, 2022, added (1)(pp).

The first 2013 amendment (ch. 462) added the last sentence in (1)(pp); substituted "2020" for "2013" in (5)(b) and (c); deleted the former second version of the section, which would have become effective July 1, 2022; and made minor stylistic changes

The second 2013 amendment (ch. 571), in (1)(r) inserted the (i) designation and substituted "twenty (20)" for "thirty-five (35)" and "subparagraph (i)" for "paragraph" therein and added (1)(r)(ii).

The 2013, 1st Ex Sess, amendment inserted "or Section 57-75-5(f)(xxviii)" following "Section 57-75-5(f)(iv)1" in (1)(y); and added (1)(qq).

The first 2014 amendment (ch. 429), in (1)(c), substituted "or natural gas exploration" for "exploitation" and inserted "the vessels or barges are" in the first sentence and added the last sentence.

The second 2014 amendment (ch.505) added (1)(ss).

The third 2014 amendment (ch. 528) added (1)(rr).

Federal Aspects — Sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, see 26 USCS §§ 501(c)(3) and 501(c)(4).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

§ 27-65-103. Exemptions; agricultural.

The exemptions from the provisions of this chapter which are of an agricultural nature or which are more properly classified as agricultural exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitution of the United States or the State of Mississippi. No agricultural exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent agricultural exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) The gross proceeds of sales of lint cotton, seed cotton, baled cotton, whether compressed or not, and cottonseed and soybeans in their original condition. Retail sales of seeds, livestock feed, poultry feed, fish feed and fertilizers. Sales of defoliants, insecticides, fungicides, herbicides and baby chicks used in growing agricultural products for market. Bagging and ties for baling cotton, hay-baling wire and twine, boxes, bags and cans used in growing or preparing agricultural products for market when possession thereof will pass to the customer at the time of sale of the product contained therein. Sales of ice to commercial fishermen purchased for use in the preservation of seafood or to producers for use in the refrigeration of vegetables for market.

(b) The sales by producers of livestock, poultry, fish, honey bees or other products of farm, grove, apiary or garden when such products are sold in the original state or condition of preparation for sale before such products are subjected to any other process within a class of business or sold by a producer through an established store, as defined in the Privilege Tax Law. However, this exemption shall not apply to ornamental plants which bear no fruit of commercial value. All sales by agricultural cooperative associations organized under Article 9, Chapter 7, Title 69, or under Chapter 17 or 19, Title 79, Mississippi Code of 1972, of agricultural products produced by members for market before such products are subjected to any manufacturing process.

(c) The gross proceeds of retail sales of mules, horses, honey bees and other livestock.

(d) Income from grading, excavating, ditching, dredging or landscaping activities performed for a farmer on a farm for agricultural or soil erosion purposes.

(e) The gross proceeds of sales of all antibiotics, hormones and hormone preparations, drugs, medicines and other medications including serums and vaccines, vitamins, minerals or other nutrients for use in the production and growing of fish, livestock, honey bees and poultry by whomever sold. Such exemption shall be in addition to the exemption provided in this section for feed for fish, livestock, honey bees and poultry.

(f) Sales of food products and honey that are grown, made or processed in Mississippi and sold from farmers' markets that have been certified by the Mississippi Department of Agriculture and Commerce.

SOURCES: Laws, 1978, ch. 347, § 4; Laws, 1987, ch. 454, § 2; Laws, 1992, ch. 466, § 1; Laws, 1998, ch. 446, § 1; Laws, 2010, ch. 474, § 1; Laws, 2013, ch. 498, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment in (b), inserted "honey bees" and "apiary" in the first sentence, and made stylistic changes in the last sentence; inserted "honey bees" in (c); inserted "honey bees" twice in (e); and inserted "and honey" in (f).

§ 27-65-105. Exemptions; governmental.

The exemption from the provisions of this chapter which are of a governmental nature or which are more properly classified as governmental exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No governmental exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent governmental exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972, except as provided by paragraph (f) of this section.

The tax levied by this chapter shall not apply to the following:

(a) Sales of property, labor, services or products taxable under Sections 27-65-17, 27-65-19, 27-65-23 and 27-19-26, when sold to and billed directly to and payment therefor is made directly by the United States government, the State of Mississippi and its departments, institutions, counties and municipalities or departments or school districts of said counties and municipalities.

The exemption from the tax imposed under this chapter shall not apply to sales of tangible personal property or specified digital products, labor or services to contractors purchasing in the performance of contracts with the United States, the State of Mississippi, counties and municipalities.

(b) Sales to schools, when such schools are supported wholly or in part by funds provided by the State of Mississippi, provided that this exemption does not apply to sales of property which is not to be used in the ordinary operation of the school, or which is to be resold to the students or the public.

(c) Amounts received from the sale of school textbooks to students.

(d) Sales to the Mississippi Band of Choctaw Indians, but not to Indians individually.

(e) Sales of fire fighting equipment to governmental fire departments or volunteer fire departments for their use.

(f) Sales of any gas from any project, as defined in the Municipal Gas Authority of Mississippi Law, to any municipality shall not be subject to sales, use or other tax.

(g) Sales of home medical equipment and home medical supplies listed as eligible for payment under Title XVIII of the Social Security Act or under the state plan for medical assistance under Title XIX of the Social Security Act, prosthetics, orthotics, hearing aids, hearing devices, prescription eyeglasses, oxygen and oxygen equipment, when ordered or prescribed by a licensed physician for medical purposes of a patient, and when payment for such equipment or supplies, or both, is made, in part or in whole, under the provisions of the Medicare or Medicaid program, then the entire sale shall be exempt from the taxes imposed by this chapter.

(h) Sales to regional educational service agencies established under Section 37-7-345.

(i) Sales of buses and other motor vehicles, and parts and labor used to maintain and/or repair such buses and motor vehicles, to an entity that (a) has entered into a contract with a school board under Section 37-41-31 for the purpose of transporting students to and from schools and (b) uses or will use the buses and other motor vehicles for such transportation purposes. This paragraph (i) shall apply to contracts entered into or renewed on or after July 1, 2010.

(j) Parking at events held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds for the grant program authorized under Section 18, Chapter 530, Laws of 1995.

SOURCES: Laws, 1978, ch. 347, § 5; Laws, 1979, chs. 355, 461, § 1; Laws, 1988, ch. 515, § 37; Laws, 1999, ch. 462, § 1; Laws, 2005, ch. 540, § 10; Laws, 2009, ch. 332, § 6; Laws, 2009, ch. 457, § 1; Laws, 2010, ch. 502, § 4; Laws, 2014, ch. 528, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (j).

§ 27-65-107. Exemptions; utility.

The exemptions from the provisions of this chapter which relate to utilities or which are more properly classified as utility exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by provisions of the Constitutions of the United States or the State of Mississippi. No utility exemption as now provided by any other section shall be valid as against the tax herein levied. Any subsequent utility exemption from the tax levied hereunder shall be provided by amendment to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales and rentals of locomotives, rail rolling stock and materials for their repair, locomotive water, when made to a railroad whose rates are fixed by the Interstate Commerce Commission or the Mississippi Public Service Commission.

(b) Rentals of manufacturing machinery to a manufacturer or custom processor where such manufacturer or custom processor is engaged in, and such machinery is used in, the manufacture of containers made from timber or wood for sale. The tax, likewise, shall not apply to replacement or repair parts of such machinery used in such manufacture.

(c) Sales of tangible personal property and services to nonprofit water associations or corporations in which no part of the net earnings inures to the benefit of any private shareholder, group or individual. Only sales of property or services which are ordinary and necessary to the operation of such organizations are exempt from tax.

(d) Wholesale sales of tangible personal property for resale under Section 27-65-19.

(e) From and after July 1, 2003, sales of fuel used to produce electric power by a company primarily engaged in the business of producing, generating or distributing electric power for sale.

(f) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a manufacturer, custom processor, technology intensive enterprise meeting the criteria provided for in Section 27-65-17(1)(f), or public service company for industrial purposes, which shall include that used to generate electricity, to operate an electrical distribution or transmission system, to operate pipeline compressor or pumping stations, or to operate railroad locomotives.

(g) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a producer or processor for use directly in the

production of poultry or poultry products, the production of livestock and livestock products, the production of domesticated fish and domesticated fish products, the production of marine aquaculture products, the production of plants or food by commercial horticulturists, the processing of milk and milk products, the processing of poultry and livestock feed, and the irrigation of farm crops.

(h) Sales of electricity, current, power, steam, coal, natural gas, liquefied petroleum gas or other fuel to a commercial fisherman, shrimper or oysterman.

SOURCES: Laws, 1978, ch. 347, § 6; Laws, 1979, ch. 302, § 8; Laws, 1988, ch. 515, § 38; Laws, 1995, ch. 508, § 5; Laws, 1997, ch. 536, § 3; Laws, 2013, ch. 537, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

Amendment Notes — The 2013 amendment, effective July 1, 2014, added (f) through (h).

§ 27-65-111. Exemptions; others.

The exemptions from the provisions of this chapter which are not industrial, agricultural or governmental, or which do not relate to utilities or taxes, or which are not properly classified as one (1) of the exemption classifications of this chapter, shall be confined to persons or property exempted by this section or by the Constitution of the United States or the State of Mississippi. No exemptions as now provided by any other section, except the classified exemption sections of this chapter set forth herein, shall be valid as against the tax herein levied. Any subsequent exemption from the tax levied hereunder, except as indicated above, shall be provided by amendments to this section.

No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972.

The tax levied by this chapter shall not apply to the following:

(a) Sales of tangible personal property and services to hospitals or infirmaries owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are subject to and governed by Sections 41-7-123 through 41-7-127.

Only sales of tangible personal property or services which are ordinary and necessary to the operation of such hospitals and infirmaries are exempted from tax.

(b) Sales of daily or weekly newspapers, and periodicals or publications of scientific, literary or educational organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as it exists as of March 31, 1975, and subscription sales of all magazines.

(c) Sales of coffins, caskets and other materials used in the preparation of human bodies for burial.

(d) Sales of tangible personal property for immediate export to a foreign country.

(e) Sales of tangible personal property to an orphanage, old men's or ladies' home, supported wholly or in part by a religious denomination, fraternal nonprofit organization or other nonprofit organization.

(f) Sales of tangible personal property, labor or services taxable under Sections 27-65-17, 27-65-19 and 27-65-23, to a YMCA, YWCA, a Boys' or Girls' Club owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual.

(g) Sales to elementary and secondary grade schools, junior and senior colleges owned and operated by a corporation or association in which no part of the net earnings inures to the benefit of any private shareholder, group or individual, and which are exempt from state income taxation, provided that this exemption does not apply to sales of property or services which are not to be used in the ordinary operation of the school, or which are to be resold to the students or the public.

(h) The gross proceeds of retail sales and the use or consumption in this state of drugs and medicines:

(i) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed or prescription filled by a registered pharmacist in accordance with law; or

(ii) Furnished by a licensed physician, surgeon, dentist or podiatrist to his own patient for treatment of the patient; or

(iii) Furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, dentist or podiatrist; or

(iv) Sold to a licensed physician, surgeon, podiatrist, dentist or hospital for the treatment of a human being; or

(v) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

"Medicines," as used in this paragraph (h), shall mean and include any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and which is commonly recognized as a substance or preparation

intended for such use; provided that "medicines" do not include any auditory, prosthetic, ophthalmic or ocular device or appliance, any dentures or parts thereof or any artificial limbs or their replacement parts, articles which are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices or other mechanical, electronic, optical or physical equipment or article or the component parts and accessories thereof, or any alcoholic beverage or any other drug or medicine not commonly referred to as a prescription drug.

Notwithstanding the preceding sentence of this paragraph (h), "medicines" as used in this paragraph (h), shall mean and include sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein or limb and which remain or dissolve in the body.

"Hospital," as used in this paragraph (h), shall have the meaning ascribed to it in Section 41-9-3, Mississippi Code of 1972.

Insulin furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this paragraph (h).

(i) Retail sales of automobiles, trucks and truck-tractors if exported from this state within forty-eight (48) hours and registered and first used in another state.

(j) Sales of tangible personal property or services to the Salvation Army and the Muscular Dystrophy Association, Inc.

(k) From July 1, 1985, through December 31, 1992, retail sales of "alcohol blended fuel" as such term is defined in Section 75-55-5. The gasoline-alcohol blend or the straight alcohol eligible for this exemption shall not contain alcohol distilled outside the State of Mississippi.

(*l*) Sales of tangible personal property or services to the Institute for Technology Development.

(m) The gross proceeds of retail sales of food and drink for human consumption made through vending machines serviced by full line vendors from and not connected with other taxable businesses.

(n) The gross proceeds of sales of motor fuel.

(o) Retail sales of food for human consumption purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, from and after October 1, 1987, or from and after the expiration of any waiver granted pursuant to federal law, the effect of which waiver is to permit the collection by the state of tax on such retail sales of food for human consumption purchased with food stamps.

(p) Sales of cookies for human consumption by the Girl Scouts of America no part of the net earnings from which sales inures to the benefit of any private group or individual.

(q) Gifts or sales of tangible personal property or services to public or private nonprofit museums of art.

(r) Sales of tangible personal property or services to alumni associations of state-supported colleges or universities.

(s) Sales of tangible personal property or services to National Association of Junior Auxiliaries, Inc., and chapters of the National Association of Junior Auxiliaries, Inc.

(t) Sales of tangible personal property or services to domestic violence shelters which qualify for state funding under Sections 93-21-101 through 93-21-113.

(u) Sales of tangible personal property or services to the National Multiple Sclerosis Society, Mississippi Chapter.

(v) Retail sales of food for human consumption purchased with food instruments issued the Mississippi Band of Choctaw Indians under the Women, Infants and Children Program (WIC) funded by the United States Department of Agriculture.

(w) Sales of tangible personal property or services to a private company, as defined in Section 57-61-5, which is making such purchases with proceeds of bonds issued under Section 57-61-1 et seq., the Mississippi Business Investment Act.

(x) The gross collections from the operation of self-service, coin-operated car washing equipment and sales of the service of washing motor vehicles with portable high-pressure washing equipment on the premises of the customer.

(y) Sales of tangible personal property or services to the Mississippi Technology Alliance.

(z) Sales of tangible personal property to nonprofit organizations that provide foster care, adoption services and temporary housing for unwed mothers and their children if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(aa) Sales of tangible personal property to nonprofit organizations that provide residential rehabilitation for persons with alcohol and drug dependencies if the organization is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.

(bb) Retail sales of an article of clothing or footwear designed to be worn on or about the human body if the sales price of the article is less than One Hundred Dollars ($100.00) and the sale takes place during a period beginning at 12:01 a.m. on the last Friday in July and ending at 12:00 midnight the following Saturday. This paragraph (bb) shall not apply to:

(i) Accessories including jewelry, handbags, luggage, umbrellas, wallets, watches, backpacks, briefcases, garment bags and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(ii) The rental of clothing or footwear; and

(iii) Skis, swim fins, roller blades, skates and similar items worn on the foot.

From and after January 1, 2010, the governing authorities of a municipality, for retail sales occurring within the corporate limits of the municipality, may suspend the application of the exemption provided for in this paragraph (bb) by adoption of a resolution to that effect stating the date

upon which the suspension shall take effect. A certified copy of the resolution shall be furnished to the Department of Revenue at least ninety (90) days prior to the date upon which the municipality desires such suspension to take effect.

(cc) The gross proceeds of sales of tangible personal property made for the sole purpose of raising funds for a school or an organization affiliated with a school.

As used in this paragraph (cc), "school" means any public or private school that teaches courses of instruction to students in any grade from kindergarten through Grade 12.

(dd) Sales of durable medical equipment and home medical supplies when ordered or prescribed by a licensed physician for medical purposes of a patient. As used in this paragraph (dd), "durable medical equipment" means equipment, including repair and replacement parts for the equipment, which:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body.

(ee) Sales of tangible personal property or services to Mississippi Blood Services.

(ff)(i) Subject to the provisions of this paragraph (ff), retail sales of firearms, ammunition and hunting supplies if sold during the annual Mississippi Second Amendment Weekend holiday beginning at 12:01 a.m. on the first Friday in September and ending at 12:00 midnight the following Sunday. For the purposes of this paragraph (ff), "hunting supplies" means tangible personal property used for hunting, including, and limited to, archery equipment, firearm and archery cases, firearm and archery accessories, hearing protection, holsters, belts and slings. Hunting supplies does not include animals used for hunting.

(ii) This paragraph (ff) shall apply only if one or more of the following occur:

1. Title to and/or possession of an eligible item is transferred from a seller to a purchaser; and/or

2. A purchaser orders and pays for an eligible item and the seller accepts the order for immediate shipment, even if delivery is made after the time period provided in subparagraph (i) of this paragraph (ff), provided that the purchaser has not requested or caused the delay in shipment.

(gg) Sales of nonperishable food items to charitable organizations that are exempt from federal income taxation under Section 501(c) (3) of the Internal Revenue Code and operate a food bank or food pantry or food lines.

(hh) Sales of tangible personal property or services to The United Way of the Pine Belt Region, Inc.

(ii) Sales of tangible personal property or services to the Mississippi Children's Museum.

(jj) Sales of tangible personal property or services to the Jackson Zoological Park.

(kk) Sales of tangible personal property or services to the Hattiesburg Zoo.

(*ll*) Gross proceeds from sales of food, merchandise or other concessions at an event held solely for religious or charitable purposes at livestock facilities, agriculture facilities or other facilities constructed, renovated or expanded with funds for the grant program authorized under Section 18, Chapter 530, Laws of 1995.

(mm) Sales of tangible personal property and services to the Diabetes Foundation of Mississippi and the Mississippi Chapter of the Juvenile Diabetes Research Foundation.

(nn) Sales of potting soil, mulch, or other soil amendments used in growing ornamental plants which bear no fruit of commercial value when sold to commercial plant nurseries that operate exclusively at wholesale and where no retail sales can be made.

SOURCES: Laws, 1978, ch. 347, § 8; Laws, 1979, ch. 302, § 9; Laws, 1980, ch. 536, § 1; Laws, 1984, ch. 452, § 1; Laws, 1985, ch. 439; Laws, 1985, ch. 516, § 4; Laws, 1987, ch. 322, § 27; Laws, 1987, ch. 454, § 3; Laws, 1993, ch. 548, § 13; Laws, 1995, ch. 542, § 1; Laws, 2004, ch. 494, § 2; Laws, 2006, ch. 536, § 1; Laws, 2009, ch. 480, § 1; Laws, 2013, ch. 498, § 2; Laws, 2014, ch. 475, § 1; Laws, 2014, ch. 529, § 2; Laws, 2014, ch. 530, § 43, eff from and after July 1, 2014.

Joint Legislative Committee Note — Joint Legislative Committee Note- Section 1 of Chapter 475, Laws of 2014, effective from and after July 1, 2014 (approved April 2, 2014), amended this section. Section 2 of Chapter 529, Laws of 2014, effective from and after July 1, 2014 (approved April 23, 2014), and Section 43 of Chapter 530, Laws of 2014, effective from and after July 1, 2014 (approved April 24, 2014), also amended this section. As set out above, this section reflects the language of Section 43 of Chapter 530, Laws of 2014, which contains language that specifically provides that it supersedes § 27-65-111 as amended by Chapter 475, Laws of 2014 and by Chapter 529, Laws of 2014.

Editor's Note — Laws of 2014, ch. 529, § 1, provides:

"SECTION 1. This act shall be known and may be cited as the 'Jessica Sibley Upshaw Food Bank and Food Pantry Sales Tax Relief Act.'"

Laws of 2014, ch. 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2013 amendment substituted "Department of Revenue" for "State Tax Commission" in the last paragraph of (bb); and added (cc) through (ee).

The first 2014 amendment (ch. 475) added (ff).

The second 2014 amendment (ch. 529) inserted "National Association of Junior Auxiliaries, Inc., and" following "property or services to" in (s), and added (ff) through (oo).

The third 2014 amendment (ch. 530) inserted "National Association of Junior Auxiliaries, Inc., and" following "property or services to" in (s), and added (ff) through (nn).

MUNICIPAL SPECIAL SALES TAX

§ 27-65-241. Certain municipalities authorized to impose special sales tax on persons engaging in business in municipality; exemptions; voter approval required before levying tax; authorized use of tax proceeds; establishment of commission; expenditure of special tax revenue to be in accordance with master plan; establishment of master plan [Repealed effective July 1, 2035].

(1) As used in this section, the following terms shall have the meanings ascribed to them in this section unless otherwise clearly indicated by the context in which they are used:

(a) "Hotel" or "motel" means and includes a place of lodging that at any one time will accommodate transient guests on a daily or weekly basis and that is known to the trade as such. Such terms shall not include a place of lodging with ten (10) or less rental units.

(b) "Municipality" means any municipality in the State of Mississippi with a population of one hundred fifty thousand (150,000) or more according to the most recent federal decennial census.

(c) "Restaurant" means and includes all places where prepared food is sold and whose annual gross proceeds of sales or gross income for the preceding calendar year equals or exceeds One Hundred Thousand Dollars ($100,000.00). The term "restaurant" shall not include any nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. For the purpose of calculating gross proceeds of sales or gross income, the sales or income of all establishments owned, operated or controlled by the same person, persons or corporation shall be aggregated.

(2)(a) Subject to the provisions of this section, the governing authorities of a municipality may impose upon all persons as a privilege for engaging or continuing in business or doing business within such municipality, a special sales tax at the rate of not more than one percent (1%) of the gross proceeds of sales or gross income of the business, as the case may be, derived from any of the activities taxed at the rate of seven percent (7%) or more under the Mississippi Sales Tax Law, Section 27-65-1 et seq.

(b) The tax levied under this section shall apply to every person making sales of tangible personal property or services within the municipality but shall not apply to:

(i) Sales exempted by Sections 27-65-19, 27-65-101, 27-65-103, 27-65-105, 27-65-107, 27-65-109 and 27-65-111 of the Mississippi Sales Tax Law;

(ii) Gross proceeds of sales or gross income of restaurants derived from the sale of food and beverages;

(iii) Gross proceeds of sales or gross income of hotels and motels derived from the sale of hotel rooms and motel rooms for lodging purposes;

(iv) Retail sales of food for human consumption not purchased with food stamps issued by the United States Department of Agriculture, or other federal agency, but which would be exempt under Section 27-65-111(o) from the taxes imposed by this chapter if the food items were purchased with food stamps;

(v) Gross income of businesses engaging or continuing in the business of TV cable systems, subscription TV services, and other similar activities, including, but not limited to, cable Internet services;

(vi) Wholesale sales of food and drink for human consumption sold to full service vending machine operators; and

(vii) Wholesale sales of light wine, beer and alcoholic beverages.

(3)(a) Before any tax authorized under this section may be imposed, the governing authorities of the municipality shall adopt a resolution declaring its intention to levy the tax, setting forth the amount of the tax to be imposed, the purposes for which the revenue collected pursuant to the tax levy may be used and expended, the date upon which the tax shall become effective, the date upon which the tax shall be repealed, and calling for an election to be held on the question. The date of the election shall be set in the resolution. Notice of the election shall be published once each week for at least three (3) consecutive weeks in a newspaper published or having a general circulation in the municipality, with the first publication of the notice to be made not less than twenty-one (21) days before the date fixed in the resolution for the election and the last publication to be made not more than seven (7) days before the election. At the election, all qualified electors of the municipality may vote. The ballots used at the election shall have printed thereon a brief description of the sales tax, the amount of the sales tax levy, a description of the purposes for which the tax revenue may be used and expended and the words "FOR THE LOCAL SALES TAX" and "AGAINST THE LOCAL SALES TAX" and the voter shall vote by placing a cross (X) or check mark (¢) opposite his choice on the proposition. When the results of the election have been canvassed by the election commissioners of the municipality and certified by them to the governing authorities, it shall be the duty of such governing authorities to determine and adjudicate whether at least three-fifths (3/5) of the qualified electors who voted in the election voted in favor of the tax. If at least three-fifths (3/5) of the qualified electors who voted in the election voted in favor of the tax, the governing authorities shall adopt a resolution declaring the levy and collection of the tax provided in this section and shall set the first day of the second month following the date of such adoption as the effective date of the tax levy. A certified copy of this resolution, together with the result of the election, shall

be furnished to the Department of Revenue not less than thirty (30) days before the effective date of the levy.

(b) A municipality shall not hold more than two (2) elections under this subsection.

(4) The revenue collected pursuant to the tax levy imposed under this section may be expended to pay the cost of road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and to pay the costs of water, sewer and drainage projects in accordance with a master plan adopted by the commission established pursuant to subsection (7).

(5)(a) The special sales tax authorized by this section shall be collected by the Department of Revenue, shall be accounted for separately from the amount of sales tax collected for the state in the municipality and shall be paid to the municipality. The Department of Revenue may retain one percent (1%) of the proceeds of such tax for the purpose of defraying the costs incurred by the department in the collection of the tax. Payments to the municipality shall be made by the Department of Revenue on or before the fifteenth day of the month following the month in which the tax was collected.

(b) The proceeds of the special sales tax shall be placed into a special municipal fund apart from the municipal general fund and any other funds of the municipality, and shall be expended by the municipality solely for the purposes authorized in subsection (4) of this section. The records reflecting the receipts and expenditures of the revenue from the special sales tax shall be audited annually by an independent certified public accountant. The accountant shall make a report of his findings to the governing authorities of the municipality and file a copy of his report with the Secretary of the Senate and the Clerk of the House of Representatives. The audit shall be made and completed as soon as practical after the close of the fiscal year of the municipality, and expenses of the audit shall be paid from the funds derived by the municipality pursuant to this section.

(c) All provisions of the Mississippi Sales Tax Law applicable to filing of returns, discounts to the taxpayer, remittances to the Department of Revenue, enforced collection, rights of taxpayers, recovery of improper taxes, refunds of overpaid taxes or other provisions of law providing for imposition and collection of the state sales tax shall apply to the special sales tax authorized by this section, except where there is a conflict, in which case the provisions of this section shall control. Any damages, penalties or interest collected for the nonpayment of taxes imposed under this section, or for noncompliance with the provisions of this section, shall be paid to the municipality on the same basis and in the same manner as the tax proceeds. Any overpayment of tax for any reason that has been disbursed to a municipality or any payment of the tax to a municipality in error may be adjusted by the Department of Revenue on any subsequent payment to the municipality pursuant to the provisions of the Mississippi Sales Tax Law. The Department of Revenue may, from time to time, make such rules and regulations not inconsistent with this section as may be deemed necessary to

carry out the provisions of this section, and such rules and regulations shall have the full force and effect of law.

(6) If a municipality expands its corporate boundaries, the governing authorities of the municipality may not impose the special sales tax in the annexed area unless the tax is approved at an election conducted, as far as is practicable, in the manner provided in subsection (3) of this section, except that only qualified electors in the annexed area may vote in the election.

(7)(a) Any municipality that levies the special sales tax authorized under this section shall establish a commission as provided for in this section. Expenditures of revenue from the special sales tax authorized by this section shall be in accordance with a master plan adopted by the commission pursuant to this subsection.

(b) The commission shall be composed of ten (10) voting members who shall be known as commissioners appointed as follows:

(i) Four (4) members representing the business community in the municipality appointed by the local chamber of commerce for initial terms of one (1), two (2), four (4) and five (5) years respectively. The members appointed pursuant to this paragraph shall be persons who represent businesses located within the city limits of the municipality.

(ii) Three (3) members shall be appointed at large by the mayor of the municipality, with the advice and consent of the legislative body of the municipality, for initial terms of two (2), three (3) and four (4) years respectively. All appointments made by the mayor pursuant to this paragraph shall be residents of the municipality.

(iii) One (1) member shall be appointed at large by the Governor for an initial term of four (4) years. All appointments made by the Governor pursuant to this paragraph shall be residents of the municipality.

(iv) One (1) member shall be appointed at large by the Lieutenant Governor for an initial term of four (4) years. All appointments made by the Lieutenant Governor pursuant to this paragraph shall be residents of the municipality.

(v) One (1) member shall be appointed at large by the Speaker of the House of Representatives for a term of four (4) years. All appointments made by the Speaker of the House of Representatives pursuant to this paragraph shall be residents of the municipality.

(c) The terms of all appointments made subsequent to the initial appointment shall be made for five (5) years. Any vacancy which may occur shall be filled in the same manner as the original appointment and shall be made for the unexpired term. Each member of the commission shall serve until his successor is appointed and qualified.

(d) The mayor of the municipality shall designate a chairman of the commission from among the membership of the commission. The vice chairman and secretary shall be elected by the commission from among the membership of the commission for a term of two (2) years. The vice chairman and secretary may be reelected, and the chairman may be reappointed.

(e) The commissioners shall serve without compensation.

(f) Any commissioner shall be disqualified and shall be removed from office for either of the following reasons:

(i) Conviction of a felony in any state court or in federal court; or

(ii) Failure to attend three (3) consecutive meetings without just cause.

If a commissioner is removed for any of the above reasons, the vacancy shall be filled in the manner prescribed in this section and shall be made for the unexpired term.

(g) A quorum shall consist of six (6) voting members of the commission. The commission shall adopt such rules and regulations as may govern the time and place for holding meetings, regular and special.

(h) The commission shall, with input from the municipality, establish a master plan for road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and for water, sewer and drainage projects. Expenditures of the revenue from the tax authorized to be imposed pursuant to this section shall be made at the discretion of the governing authorities of the municipality if the expenditures comply with the master plan. The commission shall monitor the compliance of the municipality with the master plan.

(8) The governing authorities of any municipality that levies the special sales tax authorized under this section are authorized to incur debt, including bonds, notes or other evidences of indebtedness, for the purpose of paying the costs of road and street repair, reconstruction and resurfacing projects based on traffic patterns, need and usage, and to pay the costs of water, sewer and drainage projects in accordance with a master plan adopted by the commission established pursuant to subsection (7) of this section. Any bonds or notes issued to pay such costs may be secured by the proceeds of the special sales tax levied pursuant to this section or may be general obligations of the municipality and shall satisfy the requirements for the issuance of debt provided by Sections 21-33-313 through 21-33-323.

(9) This section shall stand repealed from and after July 1, 2035.

SOURCES: Laws, 2009, ch. 328, § 1; Laws, 2011, ch. 483, § 1; Laws, 2014, ch. 530, § 39, eff from and after passage (approved April 24, 2014.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of (7)(h) as amended by Section 1 of Chapter 483, Laws of 2011, by substituting "The commission shall monitor" for "The committee shall monitor." The Joint Committee ratified the correction at its July 13, 2011, meeting.

Editor's Note — Chapter 483, Laws of 2011, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act. The United States Attorney General responded in a letter dated May 29, 2012, and interposed no objection to the substantive provisions of Chapter 483. The letter also said that certain other changes made by Chapter 483 were not yet capable of administration and therefore were not ripe for review by the United States Attorney General, but the State must seek review of those provisions under Section 5 after they have been implemented. The United States Supreme Court, in the case of *Shelby County v. Holder* (June 25,

2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5. Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. Accordingly, those other provisions of Chapter 483 do not have to be submitted for preclearance, and all of Chapter 483 is now in effect.

Laws of 2014, ch. 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2011 amendment, in (3), inserted "the date upon which the tax shall be repealed" in the first sentence of (a), and added (b); rewrote (4); in (5), substituted "may retain one percent (1%)" for "may retain three percent (3%)" in the second sentence of (a), and in (b), deleted "Thirty percent (30%)" from the beginning, substituted "authorized in subsection (4) of this section" for "authorized in subsection (4)(a) and (b) of this section" at the end of the first sentence, and deleted the former second sentence, which read "The remainder of the proceeds of the special sales tax shall be placed into a special municipal fund apart from the municipal general fund and any other funds of the municipality, and shall be expended by the municipality solely for the purposes authorized in subsection (4)(c) of this section"; rewrote (7); rewrote (8) to provide for a contingent repeal date for the section; and substituted "Department of Revenue" for "State Tax Commission" and "department" for "commission" throughout the section.

The 2014 amendment deleted "delivery or installations" following "person making sales" in (2)(b); added (2)(b)(vi), (2)(b)(vii) and made related changes; added (8) and redesignated former (8) as (9); and in (9), substituted "July 1, 2035" for "July 1, 2032; however if the tax fails to be adopted at an election held for such purpose prior to July 1, 2014, this section shall stand repealed from and after July 1, 2014."

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

§ 27-65-243. Exemption of certain businesses from tax imposed in § 27-65-241.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Sales, Use, and Utility Taxes on Retail Transactions of Internet Sellers and Internet Access Providers. 30 A.L.R.6th 341.

CHAPTER 67

Use or Compensating Taxes

ARTICLE 1.

USE TAX.

SEC.
27-67-3. Definitions.
27-67-17. Payment of tax to commissioner, filing of returns.

§ 27-67-3. Definitions.

Whenever used in this article, the words, phrases and terms shall have the meaning ascribed to them as follows:

(a) "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular in number. "Person" shall also include husband or wife, or both, where joint benefits are derived from the operation of a business taxed hereunder or where joint benefits are derived from the use of property taxed hereunder.

(d) "Taxpayer" means any person liable for the payment of any tax hereunder, or liable for the collection and payment of the tax.

(e) "Sale" or "purchase" means the exchange of properties for money or other consideration, and the barter of properties or products. Every closed transaction by which title to, or possession of, tangible personal property or specified digital products passes shall constitute a taxable event. A transaction whereby the possession of property or products is transferred but the seller retains title as security for payment of the selling price shall be deemed a sale.

(f) "Purchase price" or "sales price" means the total amount for which tangible personal property or specified digital product is purchased or sold, valued in money, including installation and service charges, and freight charges to the point of use within this state, without any deduction for cost of property or products sold, expenses or losses, or taxes of any kind except those exempt by the sales tax law. "Purchase price" or "sales price" shall not include cash discounts allowed and taken or merchandise returned by customers when the total sales price is refunded either in cash or by credit, and shall not include amounts allowed for a trade-in of similar property or products. "Purchase price" or "sales price" does not include finance charges, carrying charges or any other addition to the selling price as a result of deferred payments by the purchaser.

(g) "Lease" or "rent" means any agreement entered into for a consideration that transfers possession or control of tangible personal property or specified digital products to a person for use within this state.

(h) "Value" means the estimated or assessed monetary worth of a thing or property. The value of property or products transferred into this state for sales promotion or advertising shall be an amount not less than the cost paid by the transferor or donor. The value of property or products which have been used in another state shall be determined by its cost less straight line depreciation provided that value shall never be less than twenty percent (20%) of the cost or other method acceptable to the commissioner. On property or products imported by the manufacturer thereof for rental or lease within this state, value shall be the manufactured cost of the property and freight to the place of use in Mississippi.

(i) "Tangible personal property" means personal property perceptible to the human senses or by chemical analysis, as opposed to real property or intangibles. "Tangible personal property" shall include printed, mimeographed, multigraphed matter, or material reproduced in any other manner, and books, catalogs, manuals, publications or similar documents covering the services of collecting, compiling or analyzing information of any kind or nature. However, reports representing the work of persons such as lawyers, accountants, engineers and similar professionals shall not be included. "Tangible personal property" shall also include tangible advertising or sales promotion materials such as, but not limited to, displays, brochures, signs, catalogs, price lists, point of sale advertising materials and technical manuals. Tangible personal property shall also include computer software programs.

(j) "Person doing business in this state," "person maintaining a place of business within this state," or any similar term means any person having within this state an office, a distribution house, a salesroom or house, a warehouse, or any other place of business, or owning personal property located in this state used by another person, or installing personal property in this state. This definition also includes any person selling or taking orders for any tangible personal property, either personally, by mail or through an employee representative, salesman, commission agent, canvasser, solicitor or independent contractor or by any other means from within the state.

Any person doing business under the terms of this article by reason of coming under any one or more of the qualifying provisions listed above shall be considered as doing business on all transactions involving sales to persons within this state.

(k) "Use" or "consumption" means the first use or intended use within this state of tangible personal property or specified digital product and shall include rental or loan by owners or use by lessees or other persons receiving benefits from use of the property or product. "Use" or "consumption" shall include the benefit realized or to be realized by persons importing or causing to be imported into this state tangible advertising or sales promotion materials.

(*l*) "Storage" means keeping tangible personal property or specified digital product in this state for subsequent use or consumption in this state.

(m) "Specified digital products" shall have the meaning ascribed to such term in Section 27-65-26.

SOURCES: Codes, 1942, § 10146-02; Laws, 1955, Ex. Sess. ch. 111, § 2; Laws, 1956, ch. 422, § 1; Laws, 1960, ch. 479, § 2; Laws, 1968, ch. 588, § 12; Laws, 1980, ch. 536, § 2; Laws, 1988, ch. 491, § 3; Laws, 1988, ch. 509, § 2; Laws, 1989, ch. 409, § 1; Laws, 2009, ch. 332, § 3; Laws, 2009, ch. 492, § 107; Laws, 2014, ch. 472, § 3, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 472, § 4, effective July 1, 2014, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws or use tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws and use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2014 amendment, in (f), deleted "any additional charges for deferred payment," following "sold, valued in money, including" in the first sentence and added the last sentence; and in (j), substituted "this article" for "the article" in the second paragraph.

§ 27-67-17. Payment of tax to commissioner, filing of returns.

(1) Except as otherwise provided in this section, the commissioner shall collect the tax imposed by this article, and every person subject to its provisions shall remit to the commissioner, on or before the twentieth day of each month, the amount of tax due by such person for the preceding calendar month. Returns and payments placed in the mail must be postmarked by the due date in order to be timely filed, except that when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed. Every taxpayer shall file a return with his remittance, which return shall be prescribed by the commissioner and shall show for the calendar month preceding the tax payment date, the total sale or purchase price, or value of tangible personal property or specified digital products sold, used, stored or consumed by him for benefit received or service performed, and such other information as the commissioner may deem pertinent and necessary for determining the amount of tax due thereunder.

(2) The commissioner, in his discretion, may authorize in writing the filing of returns and the payment of tax on a quarterly basis by any person required or authorized to pay the tax imposed, such authority to be subject to revocation for good cause by the commissioner.

(3) In instances where it is impractical to file returns and pay the tax monthly or quarterly, the commissioner may authorize the filing of semiannual or annual returns.

(4) A taxpayer required to collect use taxes under this article and having an average monthly use tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the

twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such taxpayer's estimated use tax liability for the month of June of the current calendar year, or an amount equal to at least seventy-five percent (75%) of the taxpayer's use tax liability for the month of June of the preceding calendar year. Payments required to be made under this subsection must be received by the Department of Revenue no later than June 25 in order to be considered timely made. A taxpayer that fails to comply with the requirements of this subsection may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this subsection and the taxpayer's actual use tax liability for the month of June for which the estimated payment was required to be made. Payments made by a taxpayer under this subsection shall not be considered to be collected for the purposes of any use tax diversions required by law until the taxpayer files a return for the actual use taxes collected during the month of June. This subsection shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi.

(5) The commissioner, in his discretion, may authorize the computation of the tax on the basis of a formula in lieu of direct accounting of specific properties in instances where such method will expedite, simplify or provide a more equitable means of determining liability under this article. All formulas shall be subject to revocation for good cause by the commissioner.

SOURCES: Codes, 1942, § 10146-09; Laws, 1955, Ex Sess ch. 111, § 9; Laws, 1960, ch. 479, § 8; Laws, 1995, ch. 549, § 3; Laws, 2002, ch. 539, § 3; Laws, 2005, ch. 330, § 3; Laws, 2007, ch. 536, § 3; Laws, 2008, ch. 507, § 11; Laws, 2009, ch. 332, § 13; Laws, 2009, ch. 563, § 9; Laws, 2010, ch. 562, § 9; Laws, 2012, ch. 547, § 5, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment, extended the bracketed effective date in both versions from "2012" to "2014"; in (4), twice substituted "Department of Revenue" for "State Tax Commission" in both versions and substituted "June 25, 2014" for "June 25, 2003" in the first sentence of the second version.

CHAPTER 69

Tobacco Tax

SEC.

§ 27-69-5. Permit required, and penalty for failure to secure or renew same.

(1) Every distributor, wholesaler, dealer or retailer who desires to become engaged in the sale or use of tobacco upon which a tax is required to be paid shall file with the commissioner an application for a permit to engage in such business. The application for a permit shall be filed on blanks to be furnished by the commissioner for that purpose. The application must be subscribed and sworn to by the person owning the business, or having an ownership interest in the business. If the applicant is a corporation, a duly authorized agent shall execute the application. The application shall show the name of such person, and in case of partnership, the name of each partner, the person's post office address, the location of the place of business to which the permit shall apply, and the nature of the business in which engaged, and any other information the commissioner may require. No distributor, wholesaler, dealer or retailer shall sell any tobacco until the application has been filed, the prescribed permit fee paid, and the permit obtained. Except as otherwise provided in this subsection, the permit shall expire on January 31 of each year. However, a retail permit shall continue in force during the time that the permit holder to whom it is issued continues in the same business at the same location unless such permit is revoked by the commissioner for cause or is revoked pursuant to any provision of Section 27-70-1 et seq., Section 75-23-l et seq. or the Mississippi Juvenile Tobacco Access Prevention Act in Sections 97-32-1 through 97-32-23.

(2) An application shall be filed, and a permit obtained for each place of business owned or operated by each distributor, wholesaler, dealer or retailer.

(3) Upon receipt of the application and any permit fee provided for in this chapter, the commissioner may issue to every distributor, wholesaler, dealer or retailer, for the place of business designated, a nonassignable permit, authorizing the sale or use of tobacco in the state. The permit shall provide that it is revocable, and may be forfeited or suspended upon violation of any provision of this chapter, the Mississippi Tobacco Youth Access Prevention Act of 1997, Section 27-70-7 et seq., Section 75-23-1 et seq. or any rule or regulation adopted by the commissioner. If the permit is revoked or suspended, the distributor, wholesaler, dealer or retailer shall not sell any tobacco from the place of business until a new permit is granted, or the suspension of the old permit removed.

(4) A permit cannot be transferred from one person to another, and the permit shall at all times be publicly displayed by the distributor, wholesaler, dealer or retailer in his place of business so as to be seen easily by the public. A permit may be refused to any person previously convicted of violations of this chapter or Section 27-70-1 et seq.

(5) Information contained on a permit may be disclosed to the holder of a wholesaler's permit, to law enforcement agencies of the federal government, state or any political subdivision of the state, and to the Attorney General and federal agencies responsible for administering tobacco laws.

SOURCES: Codes, 1942, § 10170; Laws, 1934, ch. 125; Laws, 1940, ch. 119; Laws, 1955, Ex. Sess ch. 115, § 2; Laws, 1985, ch. 351, § 6; Laws, 1997, ch. 578, § 12; Laws, 1998, ch. 422, § 1; Laws, 2011, ch. 520, § 4, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Amendment Notes — The 2011 amendment added (5) and designated the formerly undesignated paragraphs as (1) through (4); in (1), substituted "ownership interest in the business" for "ownership interest therein" at the end of the third sentence, substituted "Except as otherwise provided in this subsection" for "Except as otherwise provided in this paragraph" at the beginning of the seventh sentence, and inserted "Section 27-70-1 et seq., Section 75-23-1 et seq. or" in the last sentence; in (3), substituted "permit fee provided for in this chapter" for "permit fee hereinafter provided for" in the first sentence, and inserted "Section 27-70-7 et seq., Section 75-23-1 et seq." in the third sentence; added "or Section 27-70-1 et seq." at the end of (4); and made minor stylistic changes throughout the section.

§ 27-69-9. Permit may be revoked and reinstated.

In addition to the penalties imposed in this chapter, after the second offense for any violation, the commissioner may revoke any permit which may have been issued to any person, or persons, violating any provisions of this chapter, or any rules or regulations promulgated by the commissioner under authority of this chapter.

The commissioner, in the event a permit is revoked, is required to notify all manufacturers, wholesalers and distributors having a permit required by this chapter, that the permit has been revoked, and such manufacturer, wholesaler and distributor is henceforth prohibited from selling taxable tobacco to such dealer or retailer. The commissioner may notify manufacturers, wholesalers and distributors as required by this paragraph either manually or electronically and shall specify by rule or regulation the method by which the notification shall be made.

SOURCES: Codes, 1942, § 10172; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 8; Laws, 1997, ch. 578, § 13; Laws, 2005, ch. 499, § 29; Laws, 2012, ch. 566, § 8, eff from and after passage (approved May 23, 2012.)

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment in the last paragraph, deleted "by letter" following "required to notify" in the first sentence and added the last sentence.

§ 27-69-21. Exemptions.

(1) The provisions of this chapter shall not apply to any tobacco donated to any charitable organization for the use of inmates of any institution supported, in whole or in part, by donations from the public, nor shall its provisions apply to tobacco purchased by the state or federal government for use of inmates of any state or federal institution. This exemption from the payment of the tax can only be allowed by the commissioner on sales supported by proof that such taxable tobacco was not purchased for resale, but donated to the inmates of the institution claiming such exemption. This proof must be accompanied by an exemption claim form as prescribed by the commissioner and signed under penalty of perjury by an official of the institution requesting the exemption.

(2) It is further provided that no tax shall apply on sales of tobacco by a wholesaler or distributor to a retailer for resale on the Mississippi and Tennessee Rivers at midstream or in the intercoastal waterway in the Mississippi Sound to crew members for use or consumption on boats or barges transporting property in interstate commerce.

SOURCES: Codes, 1942, § 10177; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1936, ch. 156; Laws, 1938, ch. 118; Laws, 1970, ch. 548, § 1; Laws, 2012, ch. 566, § 4, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment inserted the subsection designations; and substituted "accompanied by an exemption claim form as prescribed by the commissioner and signed under penalty of perjury" for "in affidavit form" in the last sentence in (1).

§ 27-69-49. Refund on damaged goods; how obtained.

(1) The commissioner may promulgate rules and regulations providing for refunds to dealers of the face value of stamps affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund is to be made by issuing new stamps of an aggregate value of the tax paid on the goods adjudged to be unfit for use, consumption, unsalable, or any other loss suffered.

(2) The proof of loss required to obtain a refund of the amount so authorized in subsection (1) of this section, shall be in a form prescribed by the commissioner and signed by the applicant under penalty of perjury, his agent or representative, or other person familiar with the facts relied upon, setting out in detail the facts and circumstances under which the loss occurred.

(3) The commissioner shall keep a permanent record of all such refunds made by him, in his office, and shall receive credit for such refunds.

(4) No cigarettes which have been adjudged unfit for use and consumption, or unsalable, shall again be offered for sale in this state, and any person

selling or offering to sell, or to give away, any such cigarettes shall be guilty of a misdemeanor.

SOURCES: Codes, 1942, § 10191; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 18; Laws, 2012, ch. 566, § 5, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 566, § 10 provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment inserted the subsection designations and rewrote (2).

§ 27-69-51. Refund for stamps shipped into another state; refund of tax paid on cigarettes in possession of wholesaler ceasing to do business in Mississippi.

(1) If any wholesaler subject to the provisions of this chapter shall sell or ship or transport any cigarettes into another state to a regular dealer, he shall be allowed a refund of the tax paid on those cigarettes. The refund shall be made by way of new stamps issued to him by the commissioner upon application accompanied by sworn acknowledgment from the purchaser, showing the units, items and date of delivery, the acknowledgment to state that he has received such cigarettes, and that stamps of an aggregate value, of which refund is requested, were on the cigarettes so acknowledged; provided further, that the acknowledgment shall show that the stamps affixed to the cigarettes, for which refund is requested, have had the cancellation marked "void" by ink, or by imprinting.

(2) If any wholesaler subject to the provisions of this chapter shall cease to do business in the State of Mississippi, he shall be allowed a refund of the tax paid on cigarettes in his possession. Such refund request shall be accompanied by a sworn acknowledgement that the wholesaler is no longer doing business in the State of Mississippi, and the acknowledgment must state that stamps with a value in the amount of the refund being requested are being returned to the Department of Revenue before use.

SOURCES: Codes, 1942, § 10192; Laws, 1932, ch. 92; Laws, 1934, ch. 125; Laws, 1938, ch. 118; Laws, 1985, ch. 351, § 19; Laws, 2011, ch. 520, § 5, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Amendment Notes — The 2011 amendment added (2) and designated the formerly undesignated provisions of the section as (1); and made minor stylistic changes.

§ 27-69-56. Repealed.

Repealed by Laws, 2009, 2nd Ex Sess, ch. 87, § 1, effective July 1, 2010.

§ 27-69-56. [Laws, 2009, 2nd Ex Sess, ch. 87, § 1, eff from and after passage (approved June 30, 2009.)]

Editor's Note — Former § 27-69-56 authorized law enforcement officers to seize certain contraband tobacco and provided procedures for disposal of the seized tobacco.

CHAPTER 70

Nonsettling-Manufacturer Cigarette Fee

SEC.

§ 27-70-3. Definitions.

As used in this chapter:

(a) "Brand family" means each style of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including "menthol," "lights," "kings" and "100s." The term includes any style of cigarette products that has a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes.

(b) "Cigarette" means any product that contains nicotine and is intended to be burned or heated under ordinary conditions of use. The term includes:

(i) A roll of tobacco wrapped in paper or another substance that does not contain tobacco;

(ii) Tobacco, in any form, that is functional in a product that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette; or

(iii) A roll of tobacco wrapped in any substance containing tobacco that, because of the product's appearance, the type of tobacco used in the filler, or the product's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(c) "Commissioner" means the Commissioner of Revenue of the Department of Revenue and his authorized agents and employees.

(d) "Mail" means placing the document or item referred to in first-class United States mail, postage prepaid, addressed to the person to whom the document or item is to be sent at the last known address of that person.

(e) "Manufacturer" means a person that manufactures, fabricates or assembles cigarettes for sale or distribution. For purposes of this chapter, the term includes a person that is the first importer into the United States of cigarettes manufactured outside the United States.

(f) "Tobacco settlement agreement" means any settlement agreement entered into by this state and one or more cigarette manufacturers in the case of Mike Moore, Attorney General, ex rel. State of Mississippi v. The American Tobacco Company et al., Chancery Court of Jackson County, Mississippi, Cause No. 94-1429, and all subsequent amendments thereto.

(g) "Distributor" shall have the same meaning ascribed to that term in Section 27-69-3.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 2; Laws, 2011, ch. 520, § 1, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Amendment Notes — The 2011 amendment, in (c), substituted "Commissioner of Revenue of the Department of Revenue" for "Chairman of the State Tax Commission" and deleted the former last sentence, which read: "From and after July 1, 2010, 'commissioner' shall mean the Commissioner of Revenue of the Department of Revenue"; deleted former (f) through (i), which defined "master settlement agreement," "nonsettling manufacturer," "nonsettling-manufacturer cigarettes" and "nonsettling-manufacturer cigarette tobacco products," respectively; and redesignated former (j) and (k) as (f) and (g).

§ 27-70-5. Tobacco equity tax; exemption; applicability; tax to be in addition to any other tax; tax imposed, levied and assessed on distributor of cigarettes; credit for tax paid on cigarettes returned to distributor.

(1)(a) In addition to the tax imposed under Section 27-69-13, and except as provided by subsection (2) of this section, there is imposed a tobacco equity tax in the amount of One and Thirty-five One Hundredths Cent ($0.0135) per cigarette on all cigarettes subject to the tax imposed under Section 27-69-13.

(b) On July 1 of each year, the tax prescribed by subsection (1) of this section shall increase by the greater of:

(i) Three percent (3%); or

(ii) The percentage increase in the most recent annual revised Consumer Price Index for all Urban Consumers, as published by the Federal Bureau of Labor Statistics of the United States Department of Labor.

(c) The revenue collected from the tax imposed by this section shall be deposited into the State General Fund.

(d) The cigarettes manufactured by any manufacturer which is a party to the tobacco settlement agreement shall be exempt from the imposition of the tobacco equity tax provided for herein.

(2) The tax imposed by this chapter does not apply to cigarettes that are sold, purchased or otherwise distributed in this state for sale outside of this state. A person may not transport or cause to be transported from this state such cigarettes for retail sale in another state without first affixing to the cigarettes the stamp required by the state in which the cigarettes are to be sold or by paying any other excise tax on the cigarettes imposed by the state in which the cigarettes are to be sold; however, a person shall not be required to affix a tax stamp of another state or pay the excise tax of another state prior to transporting the cigarettes out of this state if the other state prohibits that action or if the cigarettes are being sold to a wholesaler licensed by that state.

(3) The tax imposed by this chapter is in addition to any other privilege, license, fee, assessment or tax required or imposed by state law, including, but not limited to, the taxes levied by Section 27-69-13.

(4) The tax imposed by this chapter is imposed, levied and assessed on each distributor of cigarettes. The tax shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the stamp is required to be affixed to the cigarettes under the Tobacco Tax Law. The distributor shall make a return showing the number of such cigarettes, the brand family, and the manufacturer. The return shall also include the quantity of cigarettes, by brand family, transported or caused to be transported outside of Mississippi in the preceding month as well as the name and address of the recipient of the cigarettes transported outside of Mississippi.

(5) The distributor is eligible for a credit if cigarettes for which the distributor had previously paid the tax under this chapter were returned to the distributor.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 3; Laws, 2011, ch. 520, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of

distinctive license tag as provided by Section 27-19-37. The fee for a replacement distinctive license tag shall be Ten Dollars ($10.00). The tax collector receiving such application and affidavit shall be entitled to retain and deposit into the county general fund five percent (5%) of the fee for such replacement license tag and the remainder shall be distributed in the same manner as funds from the sale of regular distinctive license tags issued under this section.

SOURCES: Laws, 2014, ch. 483, § 13, eff from and after July 1, 2014.

Cross References — Mississippi Burn Care Fund, see § 7-9-70.
State Highway Fund, see § 65-11-35.

§ 27-19-56.374. Special license tags or plates; Pontotoc City School District supporter.

(1) Any owner of a motor vehicle who is a resident of this state, upon payment of the road and bridge privilege taxes, ad valorem taxes and registration fees as prescribed by law for private carriers of passengers, pickup trucks and other noncommercial motor vehicles, and upon payment of an additional fee in the amount provided in subsection (3) of this section, shall be issued a distinctive license tag for any motor vehicle registered in his name identifying such person as a supporter of the Pontotoc City School District. The distinctive license tags so issued shall be of such color and design as the Department of Revenue, with the advice of the Pontotoc City School District, may prescribe and shall consist of such letters or numbers, or both, as may be necessary to distinguish each license tag.

(2) Application for the distinctive license tags authorized by this section shall be made to the county tax collector on forms prescribed by the Department of Revenue. The application and the additional fee imposed under subsection (3) of this section, less Two Dollars ($2.00) thereof to be retained by the tax collector, shall be remitted to the Department of Revenue on a monthly basis as prescribed by the department. The portion of the additional fee retained by the tax collector shall be deposited into the county general fund.

(3) Beginning with any registration year commencing on or after July 1, 2014, any person applying for a distinctive license tag under this section shall pay an additional fee in the amount of Thirty Dollars ($30.00) for each distinctive license tag applied for under this section, which shall be in addition to all other taxes and fees. The additional fee paid shall be for a period of time to run concurrently with the vehicle's established license tag year. The additional fee is due and payable at the time the original application is made for a distinctive license tag under this section and thereafter annually at the time of renewal registration as long as the owner retains the distinctive license tag. If the owner does not wish to retain the distinctive license tag, he must surrender it to the local county tax collector.

(4) The Department of Revenue shall deposit all fees into the State Treasury on the day collected. At the end of each month, the Department of Revenue shall certify to the State Treasurer the total fees collected under this

section from the issuance of the distinctive license tags issued under this section. The State Treasurer shall distribute such collections as follows:

(a) Twenty-four Dollars ($24.00) of each additional fee collected on distinctive license tags issued pursuant to this section shall be distributed to the Pontotoc City School District.

(b) One Dollar ($1.00) of each additional fee collected on distinctive license tags issued pursuant to this section shall be deposited into the Mississippi Burn Care Fund created pursuant to Section 7-9-70.

(c) Two Dollars ($2.00) of each additional fee collected on distinctive license tags issued pursuant to this section shall be deposited to the credit of the State Highway Fund to be expended solely for the repair, maintenance, construction or reconstruction of highways.

(d) One Dollar ($1.00) of each additional fee collected on distinctive license tags issued pursuant to this section shall be deposited to the credit of the special fund created in Section 27-19-44.2.

(5) A regular license tag must be properly displayed as required by law until replaced by a distinctive license tag under this section. The regular license tag must be surrendered to the tax collector upon issuance of the distinctive license tag under this section. The tax collector shall issue up to two (2) license decals for each distinctive license tag issued under this section, which will expire the same month and year as the regular license tag.

(6) In the case of loss or theft of a distinctive license tag issued under this section, the owner may make application and affidavit for a replacement distinctive license tag as provided by Section 27-19-37. The fee for a replacement distinctive license tag shall be Ten Dollars ($10.00). The tax collector receiving such application and affidavit shall be entitled to retain and deposit into the county general fund five percent (5%) of the fee for such replacement license tag and the remainder shall be distributed in the same manner as funds from the sale of regular distinctive license tags issued under this section.

SOURCES: Laws, 2014, ch. 483, § 14, eff from and after July 1, 2014.

Cross References — Mississippi Burn Care Fund, see § 7-9-70.
State Highway Fund, see § 65-11-35.

§ 27-19-56.375. Special license tags or plates; Moss Point High School supporter.

(1) Any owner of a motor vehicle who is a resident of this state, upon payment of the road and bridge privilege taxes, ad valorem taxes and registration fees as prescribed by law for private carriers of passengers, pickup trucks and other noncommercial motor vehicles, and upon payment of an additional fee in the amount provided in subsection (3) of this section, shall be issued a distinctive license tag for any motor vehicle registered in his name identifying such person as a supporter of Moss Point High School. The distinctive license tags so issued shall be of such color and design as the Department of Revenue, with the advice of the Principal of Moss Point High

(3) All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of that law, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for the taxes under this chapter, and the commissioner shall exercise all the power and authority and perform all duties with respect to taxpayers under this chapter as are provided under the Mississippi Sales Tax Law, except where there is a conflict, in which case this chapter shall control.

SOURCES: Laws, 2009, 2nd Ex Sess, ch. 85, § 10; Laws, 2011, ch. 520, § 3, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

Amendment Notes — The 2011 amendment rewrote the section.

Cross References — Mississippi Sales Tax Law, see §§ 27-65-1, et seq.

§ 27-70-21. Repealed.

Repealed by Laws, 2011, ch. 520, § 6, effective from and after July 1, 2011.

§ 27-70-21. [Laws, 2009, 2nd Ex Sess, ch. 85, § 11, eff from and after July 1, 2009.]

Editor's Note — Former § 27-70-21 required certain cigarette manufacturers to register with the Attorney General.

Laws of 2011, ch. 520, § 7, effective July 1, 2011, provides:

"SECTION 7. Nothing in this act shall affect or defeat a distributor's duty to comply with Section 27-70-9 as it was in effect prior to the effective date of this act for any month concluding prior to the effective date of this act. Nothing in this act shall affect or defeat any liability of any nonsettling manufacturer for any fee due pursuant to Section 27-70-1 et seq. for any month ending prior to the effective date of this act. Nothing in this act shall affect or defeat any assessment of, or the authority of the commissioner to assess, any fee imposed on the sale, use consumption or distribution of nonsettling-manufacturer cigarettes under Section 27-70-1 et seq. for any month concluding prior to the effective date of this act."

CHAPTER 71

Alcoholic Beverage Taxes

Article 1.

Alcoholic Beverages.

Sec.
27-71-5. Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places.

§ 27-71-5. Annual privilege taxes and other fees; permits; penalties; prohibition of alcoholic beverages in public places.

(1) Upon each person approved for a permit under the provisions of the Alcoholic Beverage Control Law and amendments thereto, there is levied and imposed for each location for the privilege of engaging and continuing in this state in the business authorized by such permit, an annual privilege license tax in the amount provided in the following schedule:

(a) Except as otherwise provided in this subsection (1), manufacturer's permit, Class 1, distiller's and/or rectifier's $4,500.00

(b) Manufacturer's permit, Class 2, wine Manufacturer $1,800.00

(c) Manufacturer's permit, Class 3, native wine manufacturer per ten thousand (10,000) gallons or part thereof produced .....$ 10.00

(d) Native wine retailer's permit .....$ 50.00

(e) Package retailer's permit, each .....$ 900.00

(f) On-premises retailer's permit, except for clubs and common carriers, each .....$ 450.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof ..$ 225.00

(g) On-premises retailer's permit for wine of more than five percent (5%) alcohol by weight, but not more than twenty-one percent (21%) alcohol by weight, each .....$ 225.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof .$ 225.00

(h) On-premises retailer's permit for clubs .....$ 225.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof ..$ 225.00

(i) On-premises retailer's permit for common carriers, per car, plane, or other vehicle .....$ 120.00

(j) Solicitor's permit, regardless of any other provision of law, solicitor's permits shall be issued only in the discretion of the department . .$ 100.00

(k) Filing fee for each application except for an employee identification card .....$ 25.00

(*l*) Temporary permit, Class 1, each .....$ 10.00

(m) Temporary permit, Class 2, each .....$ 50.00

On-premises purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof .....$ 225.00

(n)(i) Caterer's permit .....$ 600.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof .....$ 250.00

(ii) Caterer's permit for holders of on-premises retailer's permit .....$ 150.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof .....$ 250.00

(o) Research permit .....$ 100.00

(p) Temporary permit, Class 3 (wine only) .....$ 10.00

(q) Special service permit .....$ 225.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof ..$ 250.00

(r) Merchant permit .....$ 225.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof ..$ 250.00

(s) Temporary wine charitable auction permit .....$ 10.00

(t) Event venue retailer's permit .....$ 225.00

On purchases exceeding Five Thousand Dollars ($5,000.00) and for each additional Five Thousand Dollars ($5,000.00), or fraction thereof ..$ 225.00

If a person approved for a manufacturer's permit, Class 1, distiller's permit produces a product with at least fifty-one percent (51%) of the finished product by volume being obtained from alcoholic fermentation of grapes, fruits, berries, honey and/or vegetables grown and produced in Mississippi, and produces all of the product by using not more than one (1) still having a maximum capacity of one hundred fifty (150) liters, the annual privilege license tax for such a permit shall be Ten Dollars ($10.00) per ten thousand (10,000) gallons or part thereof produced. Bulk, concentrated or fortified ingredients used for blending may be produced outside this state and used in producing such a product.

In addition to the filing fee imposed by paragraph (k) of this subsection, a fee to be determined by the Department of Revenue may be charged to defray costs incurred to process applications. The additional fees shall be paid into the State Treasury to the credit of a special fund account, which is hereby created, and expenditures therefrom shall be made only to defray the costs incurred by the Department of Revenue in processing alcoholic beverage applications. Any unencumbered balance remaining in the special fund account on June 30 of any fiscal year shall lapse into the State General Fund.

All privilege taxes imposed by this section shall be paid in advance of doing business. The additional privilege tax imposed for an on-premises retailer's permit based upon purchases shall be due and payable on demand.

Any person who has paid the additional privilege license tax imposed by paragraph (f), (g), (h), (m), (n), (q) or (r) of this subsection, and whose permit is renewed, may add any unused fraction of Five Thousand Dollars ($5,000.00)

purchases to the first Five Thousand Dollars ($5,000.00) purchases authorized by the renewal permit, and no additional license tax will be required until purchases exceed the sum of the two (2) figures.

(2) There is imposed and shall be collected from each permittee, except a common carrier, solicitor or a temporary permittee, by the department, an additional license tax equal to the amounts imposed under subsection (1) of this section for the privilege of doing business within any municipality or county in which the licensee is located. If the licensee is located within a municipality, the department shall pay the amount of additional license tax to the municipality, and if outside a municipality the department shall pay the additional license tax to the county in which the licensee is located. Payments by the department to the respective local government subdivisions shall be made once each month for any collections during the preceding month.

(3) When an application for any permit, other than for renewal of a permit, has been rejected by the department, such decision shall be final. Appeal may be made in the manner provided by Section 67-1-39. Another application from an applicant who has been denied a permit shall not be reconsidered within a twelve-month period.

(4) The number of permits issued by the department shall not be restricted or limited on a population basis; however, the foregoing limitation shall not be construed to preclude the right of the department to refuse to issue a permit because of the undesirability of the proposed location.

(5) If any person shall engage or continue in any business which is taxable under this section without having paid the tax as provided in this section, the person shall be liable for the full amount of the tax plus a penalty thereon equal to the amount thereof, and, in addition, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term of not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court.

(6) It shall be unlawful for any person to consume alcoholic beverages on the premises of any hotel restaurant, restaurant, club or the interior of any public place defined in Chapter 1, Title 67, Mississippi Code of 1972, when the owner or manager thereof displays in several conspicuous places inside the establishment and at the entrances of establishment a sign containing the following language: NO ALCOHOLIC BEVERAGES ALLOWED.

SOURCES: Codes, 1942, § 10265-103; Laws, 1966, ch. 649, § 3; Laws, 1976, ch. 467, § 9; Laws, 1984, ch. 425, § 2; Laws, 1986, ch. 381; Laws, 1988, ch. 302, § 2; Laws, 1989, ch. 484, § 2; Laws, 1994, ch. 538, § 1; Laws, 2004, ch. 479, § 1; Laws, 2006, ch. 529, § 1; Laws, 2009, ch. 465, § 3; Laws, 2014, ch. 527, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "department" for "commission" and "Department of Revenue" for "State Tax Commission" throughout the section; added (1)(t); and made minor stylistic changes.

Cross References — Department of Revenue generally, see §§ 27-3-1 et seq.

ARTICLE 3.

LIGHT WINES AND BEER.

SEC.
27-71-301. Definitions.

§ 27-71-301. Definitions.

When used in this article the words and terms hereafter mentioned shall have the following definitions:

(a) "State Auditor" means the State Auditor of Public Accounts of the State of Mississippi or any legally appointed deputy, clerk or agent.

(b) "Person" includes all natural persons or corporations, a partnership, an association, a joint venture, an estate, a trust, or any other group or combination acting as a unit and shall include the plural as well as the singular unless an intention to give another meaning thereto is disclosed in the context.

(c) "Consumer" means a person who comes into the possession of beer or light wine, the sale of which is authorized by Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of consuming it, giving it away or otherwise disposing of it in any manner except by sale, barter or exchange.

(d) "Retailer" means any person who comes into the possession of such light wines or beer for the purpose of selling it to the consumer, or giving it away, or exposing it where it may be taken or purchased or acquired in any other manner by the consumer; however, the term "retailer" shall not include a person who offers and provides beer on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

(e) "Wholesaler" means any person who comes into possession of such light wine or beer for the purpose of selling, distributing, or giving it away to retailers or other wholesalers or dealers inside or outside of this state.

(f) "Commissioner" means the Commissioner of Revenue of the Department of Revenue or his duly appointed agents or employees.

(g) "Sale" includes the exchange of such light wines or beer for money, or giving away or distributing any such light wines or beer for anything of value; however, the term "sale" shall not include beer offered and provided on the premises of a brewery for the purpose of tasting or sampling as authorized in Section 67-3-47.

(h) "Light wines or beer" means beer and light wines legalized for sale by the provisions of Chapter 3 of Title 67, Mississippi Code of 1972.

(i) "Distributor" includes every person who receives either from within or from without this state, from a brewery, a winery or any other source, light wines or beer as defined in Chapter 3 of Title 67, Mississippi Code of 1972, for the purpose of distributing or otherwise disposing of such light wines or beer to a wholesaler or retailer of such light wines or beer.

(j) "Brewpub" means the premises of any restaurant, as defined in Section 67-1-5, Mississippi Code of 1972, in which light wine or beer is

manufactured or brewed, subject to the production limitation imposed in Section 67-3-22, for consumption exclusively on the premises. "Premises," for the purpose of this paragraph (j) for a brewpub operated by a hospitality operator, means only those areas immediately adjacent and connected to the brewing facility where food is normally sold and consumed. "Premises," for the purposes of this paragraph (j) for a brewpub not operated by a hospitality operator, means those areas normally used by the brewpub to conduct business and shall include the selling areas, brewing areas and storage areas. For purposes of this paragraph (j), hospitality operator shall have the meaning ascribed to such term in Section 67-33-22.

(k) "Hospitality cart" means a mobile cart from which alcoholic beverages and light wine and beer are sold on a golf course and for which a hospitality cart permit has been issued under Section 67-1-51.

SOURCES: Codes, 1942, § 10237; Laws, 1934, ch. 127; Laws, 1998, ch. 308, § 1; Laws, 2007, ch. 462, § 7; Laws, 2009, ch. 492, § 112; Laws, 2012, ch. 569, § 4, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added language beginning "however, the term 'retailer'" at the end of (d); and added language beginning "however, the term 'sale'" at the end of (g).

Article 5.

Breweries.

§ 27-71-509. Labels.

It shall be unlawful for any brewer, manufacturer, distributor or retailer of light wines and beer, or either of them, to whom a permit has been issued under the provisions of Sections 67-3-15 and 67-3-23, Mississippi Code of 1972, to write or print on any label or container of either of the above named commodities any matter relating to the alcoholic content of such beverage or beverages, except a statement, to the effect that the contents of the vessel or container in which light wine shall be sold does not contain alcohol in excess of five percent (5%) of the contents thereof, by weight, and that the contents of the vessel or container in which beer shall be sold does not contain alcohol in excess of eight percent (8%) of the contents thereof, by weight. It shall be unlawful for any such brewer, wholesaler, distributor or retailer to sell any such commodity with any statement in conflict with the provisions of this section, with reference to the alcoholic content of such beverage or beverages, except that a statement of alcoholic content may be expressed on any light wine or beer label in terms of volume or weight, at the manufacturer's option; and such statement, if by volume, shall be subject to the same permitted tolerance allowed for wine containing fourteen percent (14%) alcohol by volume or less by Section 4.36(b)(1) of the Federal Labeling Requirements for

Wine, 27 CFR Part 4, subpart D, and Section 7.71(c) 27 CFR Part 7, subpart G, and, if by weight, shall be subject to an equivalent permitted tolerance, determined in terms of alcohol by weight.

SOURCES: Codes, 1942, § 10234; Laws, 1934, ch. 128; Laws, 1986, ch. 337, § 6; Laws, 1987, ch. 355, § 1; Laws, 1998, ch. 306, § 1; Laws, 2012, ch. 323, § 12, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "light wine shall be sold does not contain alcohol in excess of five percent (5%) of the contents thereof, by weight, and that the contents of the vessel or container in which beer shall be sold does not contain alcohol in excess of eight percent (8%) of the contents thereof, by weight" for "such commodity or commodities shall be sold does not contain alcohol in excess of five percent (5%) of the contents thereof, by weight" in the first sentence.

CHAPTER 73

Tax Refunds

SEC.
27-73-5. Period within which suits may be filed for refunds.

§ 27-73-5. Period within which suits may be filed for refunds.

Except as otherwise provided in Sections 27-7-49, 27-13-49 and 27-65-42, all suits by any taxpayer for the recovery of any privilege, income, franchise, or other excise tax, and all applications or proceedings for any refund or credit of these taxes shall be filed or made within three (3) years next after the return was filed, or from the date the assessment of the tax was made, or from the date the tax was paid, as the case may be, whichever is the earlier, and no recovery of taxes under any such suit shall be had and no refund of taxes shall be made unless the suit or application was filed within the period of limitation.

However, as to income taxes the three-year statute of limitations shall be extended to six (6) years in cases where the reported net income of a taxpayer has been reduced by the Internal Revenue Service for any taxable period.

SOURCES: Codes, 1942, § 9979.5; Laws, 1956, ch. 424, § 1; Laws, 2013, ch. 470, § 5, eff from and after Jan. 1, 2013.

Editor's Note — Laws of 2013, ch. 470, § 7, effective July 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under

such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective."

Amendment Notes — The 2013 amendment added the exception at the beginning of the first paragraph; substituted "Internal Revenue Service" for "bureau of internal revenue" in the last paragraph; and made minor stylistic changes.

CHAPTER 77

Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue

Sec.

§ 27-77-1. Definitions.

[Effective until January 1, 2015, this section will read:]

As used in this chapter:

(a) "Agency" means the commissioner acting directly or through his duly authorized officers, agents, representatives and employees, to perform duties and powers prescribed by the laws of this state to be performed by the Commissioner of Revenue or the Department of Revenue.

(b) "Board of review" means the board of review of the Department of Revenue as appointed by the commissioner under Section 27-77-3, and also means a panel of the board of review when an appeal is considered by a panel of the board of review instead of the board of review en banc.

(c) "Board of Tax Appeals" means the Board of Tax Appeals as created under Section 27-4-1.

(d) "Chairman" means the Chairman of the Board of Tax Appeals.

(e) "Commissioner" means the Commissioner of the Department of Revenue.

(f) "Denial" means the final decision of the staff of the agency to deny the claim, request for waiver or application being considered. In this context, staff of the agency does not include the board of review or the Board of Tax Appeals. "Denial" does not mean the act of returning or refusing to consider a claim, request for waiver or application for permit, IFTA license, IRP registration, title or tag by the staff of the agency due to a lack of information and/or documentation unless the return or refusal is in response to a

representation by the person who filed the claim, request for waiver or application in issue that information and/or documentation indicated by the staff of the agency to be lacking cannot or will not be provided.

(g) "Designated representative" means an individual who represents a person in an administrative appeal before a hearing officer of the agency, before the board of review or before the Board of Tax Appeals.

(h) "Executive director" means the Executive Director of the Board of Tax Appeals.

(i) "IFTA license" means a permit, license or decal which the agency is authorized to issue or revoke under the Interstate Commercial Carriers Motor Fuel Tax Law (Section 27-61-1 et seq.) or the International Fuel Tax Agreement.

(j) "IFTA licensee" means a person holding the IFTA license, applying for an IFTA license or renewing an IFTA license.

(k) "IRP registration" means the registration of a vehicle under the provisions of the International Registration Plan.

(*l*) "IRP registrant" means a person in whose name a vehicle or vehicles are registered under the provisions of the International Registration Plan.

(m) "IRP credentials" means the cab card and license plate issued by the commissioner or agency in accordance with the International Registration Plan.

(n) "Last known address" when referring to the mailing of a notice of intent to suspend, revoke or to order the surrender and/or seizure of the permit, IFTA license, IRP registration, IRP credentials, tag or title or to the mailing of a denial of the permit, IFTA license, IRP registration, tag or title, means the last mailing address of the person being sent the notice as it appears on the record of the agency in regard to the permit, IFTA license, IRP registration, tag or title in issue. All other references to "last known address" in this chapter mean the official mailing address that the hearing officer, the board of review or the executive director has for the addressee in their file on the administrative appeal in which the document or item is being mailed to the addressee. The addressee is presumed to have received any document or item mailed to his official mailing address. The commissioner, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process for appeals before an administrative hearing officer or the Board of Review of the Department of Revenue and the procedure for changing that official mailing address. The Board of Tax Appeals, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process before that board and the procedure for changing that official mailing address. It is the responsibility of the addressee to make sure that his official mailing address is correct.

(o) "Mail," "mailed" or "mailing" means placing the document or item referred to in first-class United States mail, postage prepaid, addressed to the person to whom the document or item is to be sent at the last known address of that person. Where a person is represented in an administrative

appeal before a hearing officer, the board of review or the Board of Tax Appeals by a designated representative, the terms "mail," "mailed" or "mailing" when referring to sending a document or item to that person shall also mean placing the document or item referred to in first-class United States mail, postage prepaid, to the last known address of that person's designated representative. Mailing to the designated representative of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder shall constitute mailing and notice to the taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.

(p) "Permit" means a type of license or permit that the agency is authorized to issue, suspend or revoke, such as a sales tax permit, a beer permit, a tobacco permit, a dealer license, or designated agent status, but does not include:

(i) Any type of permit issued under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq. or under the Mississippi Native Wine Law of 1976, Section 67-5-1 et seq.;

(ii) An IFTA license; or

(iii) An IRP registration, including the IRP credential issued as a result of IRP registration.

(q) "Permittee" means a person holding a permit, applying for a permit or renewing a permit.

(r) "Person" means a natural person, partnership, limited partnership, corporation, limited liability company, estate, trust, association, joint venture, other legal entity or other group or combination acting as a unit, and includes the plural as well as the singular in number. "Person" includes the state, county, municipal, other political subdivision and any agency, institution or instrumentality thereof, but only when used in the context of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.

(s) "Refund claim" means a claim made in writing by a taxpayer and received by the agency wherein the taxpayer indicates that he overpaid taxes to the agency and requests a refund of the overpayment and/or a credit against current or future taxes for the overpayment.

(t) "Resident," when used to describe a taxpayer or petitioner, means a natural person whose residence and place of abode is within the State of Mississippi.

(u) "Tag" means a type of license tag, plate or registration card for a motor vehicle or trailer that the agency is authorized under the Mississippi Motor Vehicle Privilege Tax Law, Section 27-19-1 et seq., or under the Motor Vehicle Dealer Tag Permit Law, Section 27-19-301 et seq., to issue or approve before issuance, but does not include other types of license tags or plates issued by the county tax collectors except for personalized license tags and only to the extent that the agency determines under Section 27-19-48 that a personalized license tag applied for is considered obscene, slandering, insulting or vulgar in ordinary usage or demands the surrender or orders the seizure of the tag where issued in error.

(v) "Tag holder" means the person in whose name a tag is registered or the person applying for a tag.

(w) "Tag penalty" means the penalties imposed under Sections 27-19-63 and 27-51-43 for any delinquency in the payment of motor vehicle privilege tax and ad valorem tax on a motor vehicle which can be waived by the agency for good reason shown. Pursuant to Section 27-51-103, imposition of this ad valorem tag penalty at the maximum rate of twenty-five percent (25%) also results in ineligibility for the credit against motor vehicle ad valorem taxes provided by that statute. Waiver of the twenty-five percent (25%) delinquency penalty by the agency under Section 27-51-43 shall reinstate credit eligibility.

(x) "Tax" means a tax, fee, penalty and/or interest which the agency is required by either general law or by local and private law to administer, assess and collect.

(y) "Taxpayer" means a person who is liable for or paid any tax to the agency.

(z) "Title" means a title to a motor vehicle or manufactured housing issued by the agency under the Mississippi Motor Vehicle Title Law, Section 63-21-1 et seq.

(aa) "Title interest holder" shall mean the owner or lienholder in a motor vehicle or manufactured housing as indicated on a title issued by the agency or as indicated on an application to the agency for the issuance of a title.

[Effective from and after January 1, 2015, this section will read:]

As used in this chapter:

(a) "Agency" means the commissioner acting directly or through his duly authorized officers, agents, representatives and employees, to perform duties and powers prescribed by the laws of this state to be performed by the Commissioner of Revenue or the Department of Revenue.

(b) "Board of Review" means the Board of Review of the Department of Revenue as appointed by the commissioner under Section 27-77-3, and also means a panel of the Board of Review when an appeal is considered by a panel of the Board of Review instead of the Board of Review en banc.

(c) "Board of Tax Appeals" means the Board of Tax Appeals as created under Section 27-4-1.

(d) "Chairman" means the Chairman of the Board of Tax Appeals.

(e) "Commissioner" means the Commissioner of the Department of Revenue.

(f) "Denial" means the final decision of the staff of the agency to deny the claim, request for waiver or application being considered. In this context, staff of the agency does not include the Board of Review or the Board of Tax Appeals. "Denial" does not mean the act of returning or refusing to consider a claim, request for waiver or application for permit, IFTA license, IRP registration, title or tag by the staff of the agency due to a lack of information and/or documentation unless the return or refusal is in response to a

representation by the person who filed the claim, request for waiver or application in issue that information and/or documentation indicated by the staff of the agency to be lacking cannot or will not be provided.

(g) "Designated representative" means an individual who represents a person in an administrative appeal before a hearing officer of the agency, before the Board of Review or before the Board of Tax Appeals.

(h) "Executive director" means the Executive Director of the Board of Tax Appeals.

(i) "IFTA license" means a permit, license or decal which the agency is authorized to issue or revoke under the Interstate Commercial Carriers Motor Fuel Tax Law (Section 27-61-1 et seq.) or the International Fuel Tax Agreement.

(j) "IFTA licensee" means a person holding the IFTA license, applying for an IFTA license or renewing an IFTA license.

(k) "IRP registration" means the registration of a vehicle under the provisions of the International Registration Plan.

(*l*) "IRP registrant" means a person in whose name a vehicle or vehicles are registered under the provisions of the International Registration Plan.

(m) "IRP credentials" means the cab card and license plate issued by the commissioner or agency in accordance with the International Registration Plan.

(n) "Last known address" when referring to the mailing of a notice of intent to suspend, revoke or to order the surrender and/or seizure of the permit, IFTA license, IRP registration, IRP credentials, tag or title or to the mailing of a denial of the permit, IFTA license, IRP registration, tag or title, means the last mailing address of the person being sent the notice as it appears on the record of the agency in regard to the permit, IFTA license, IRP registration, tag or title in issue. All other references to "last known address" in this chapter mean the official mailing address that the hearing officer, the Board of Review or the executive director has for the addressee in their file on the administrative appeal in which the document or item is being mailed to the addressee. The addressee is presumed to have received any document or item mailed to his official mailing address. The commissioner, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process for appeals before an administrative hearing officer or the Board of Review of the Department of Revenue and the procedure for changing that official mailing address. The Board of Tax Appeals, by regulation, shall prescribe the procedure for establishing an official mailing address in the administrative appeal process before that board and the procedure for changing that official mailing address. It is the responsibility of the addressee to make sure that his official mailing address is correct.

(o) "Mail," "mailed" or "mailing" means placing the document or item referred to in United States mail, postage prepaid, via mail, addressed to the person to whom the document or item is to be sent at the last known address of that person. Where a person is represented in an administrative appeal

before a hearing officer, the Board of Review or the Board of Tax Appeals by a designated representative, the terms "mail," "mailed" or "mailing" when referring to sending a document or item to that person shall also mean placing the document or item referred to in United States mail, via mail, postage prepaid, to the last known address of that person's designated representative. Mailing to the designated representative of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder shall constitute mailing and notice to the taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.

(p) "Permit" means a type of license or permit that the agency is authorized to issue, suspend or revoke, such as a sales tax permit, a beer permit, a tobacco permit, a dealer license, or designated agent status, but does not include:

(i) Any type of permit issued under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq. or under the Mississippi Native Wine Law of 1976, Section 67-5-1 et seq.;

(ii) An IFTA license; or

(iii) An IRP registration, including the IRP credential issued as a result of IRP registration.

(q) "Permittee" means a person holding a permit, applying for a permit or renewing a permit.

(r) "Person" means a natural person, partnership, limited partnership, corporation, limited liability company, estate, trust, association, joint venture, other legal entity or other group or combination acting as a unit, and includes the plural as well as the singular in number. "Person" includes the state, county, municipal, other political subdivision and any agency, institution or instrumentality thereof, but only when used in the context of a taxpayer, permittee, IFTA licensee, IRP registrant, tag holder or title interest holder.

(s) "Refund claim" means a claim made in writing by a taxpayer and received by the agency wherein the taxpayer indicates that he overpaid taxes to the agency and requests a refund of the overpayment and/or a credit against current or future taxes for the overpayment.

(t) "Resident," when used to describe a taxpayer or petitioner, means a natural person whose residence and place of abode is within the State of Mississippi.

(u) "Tag" means a type of license tag, plate or registration card for a motor vehicle or trailer that the agency is authorized under the Mississippi Motor Vehicle Privilege Tax Law, Section 27-19-1 et seq., or under the Motor Vehicle Dealer Tag Permit Law, Section 27-19-301 et seq., to issue or approve before issuance, but does not include other types of license tags or plates issued by the county tax collectors except for personalized license tags and only to the extent that the agency determines under Section 27-19-48 that a personalized license tag applied for is considered obscene, slandering, insulting or vulgar in ordinary usage or demands the surrender or orders the seizure of the tag where issued in error.

(v) "Tag holder" means the person in whose name a tag is registered or the person applying for a tag.

(w) "Tag penalty" means the penalties imposed under Sections 27-19-63 and 27-51-43 for any delinquency in the payment of motor vehicle privilege tax and ad valorem tax on a motor vehicle which can be waived by the agency for good reason shown. Pursuant to Section 27-51-103, imposition of this ad valorem tag penalty at the maximum rate of twenty-five percent (25%) also results in ineligibility for the credit against motor vehicle ad valorem taxes provided by that statute. Waiver of the twenty-five percent (25%) delinquency penalty by the agency under Section 27-51-43 shall reinstate credit eligibility.

(x) "Tax" means a tax, fee, penalty and/or interest which the agency is required by either general law or by local and private law to administer, assess and collect.

(y) "Taxpayer" means a person who is liable for or paid any tax to the agency.

(z) "Title" means a title to a motor vehicle or manufactured housing issued by the agency under the Mississippi Motor Vehicle Title Law, Section 63-21-1 et seq.

(aa) "Title interest holder" shall mean the owner or lienholder in a motor vehicle or manufactured housing as indicated on a title issued by the agency or as indicated on an application to the agency for the issuance of a title.

SOURCES: Laws, 2005, ch. 499, § 1; Laws, 2007, ch. 400, § 2; Laws, 2009, ch. 492, § 113; Laws, 2010, ch. 388, § 8; Laws, 2014, ch. 476, § 15, effective from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 19, effective January 1, 2015 provides:

"SECTION 19. Nothing in Sections 15, 16 or 17 of this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or claim for tax credits or incentives or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or claim for tax credits or incentives where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective."

Sections 15, 16 and 17 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-77-1, 27-77-5 and 27-77-7. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2014 amendment, in the second version of the section, effective January 1, 2015, in (o), deleted "first-class" preceding "United States mail" and inserted "via mail" in the first and second sentences.

§ 27-77-5. Appeals from Department of Revenue actions; appeal must be in writing; notice and hearing; appeal to Board of Tax Appeals from decision of board of review; hearing before Board of Tax Appeals; withdrawal of appeal.

[Effective until January 1, 2015, this section will read:]

(1) Any taxpayer aggrieved by an assessment of tax by the agency, by the agency's denial of a refund claim, or by the denial of a waiver of tag penalty, and who wishes to contest the action of the agency shall, within sixty (60) days from the date of the action, file an appeal in writing with the board of review requesting a hearing and correction of the contested action specifying in detail the relief requested and any other information that might be required by regulation. Even after an appeal is filed with the board of review, the agency retains the authority to change the assessment, the denial of refund claim or the denial of tag penalty being appealed.

(2) Upon receipt of a timely written appeal from a tax assessment, refund claim denial or denial of waiver of a tag penalty, a hearing shall be scheduled before the board of review unless it is determined that the relief requested in the written appeal should be granted without a hearing. A notice of the hearing shall be mailed to the taxpayer advising the taxpayer of the date, time and location of the hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to, and granted by, the board of review to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the board of review or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(3) At a hearing before the board of review on a tax assessment, denial of refund claim, or denial of waiver of a tag penalty, the board of review shall try the issues presented, according to law and the facts and within the guidelines established by regulation. The hearing before the board of review shall be informal and no official transcript will be made of the hearing. At the earliest practical date after the hearing, the members of the board of review that heard the appeal shall make a determination on the matter presented and notify the taxpayer of its findings by mailing a copy of its order to the taxpayer. If the order involves the appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty. If in the order the board of review orders the taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date of the order, pay the amount ordered to be paid or appeal the order of the board of review to the Board of Tax Appeals. After the sixty-day period, if an appeal is not filed by the taxpayer with the Executive Director of the Board of Tax Appeals and the tax determined by the board of review is not paid, the agency shall proceed to collect the tax assessment as determined by the board of review.

(4) Any taxpayer aggrieved by an order of the board of review affirming a tax assessment, the denial of a refund claim, or the denial of a waiver of tag

penalty, and who wishes to contest the order shall, within sixty (60) days from the date of the order of the board of review being contested, file an appeal to the Board of Tax Appeals. The appeal shall be in writing and shall request a hearing and reversal or modification of the order of the board of review, specify in detail the relief requested and contain any other information that might be required by regulation, and be filed with the executive director. At the time of filing his appeal with the executive director, the taxpayer shall also file a copy of his written appeal with the board of review. Even after an appeal is filed with the Executive Director of the Board of Tax Appeals, the board of review retains the authority to amend and/or correct the order being appealed at any time prior to a decision by the Board of Tax Appeals on the appeal. Failure to timely file a written appeal with the executive director within the sixty-day period shall make the order of the board of review final and not subject to further review by the Board of Tax Appeals or a court, other than as to the issue of whether a written appeal from the order of the board of review was timely filed with the executive director.

(5) Upon receipt of a written appeal from an order of the board of review affirming a tax assessment, refund claim denial or denial of waiver of a tag penalty, the executive director shall schedule a hearing before the Board of Tax Appeals on the appeal. A notice of this hearing shall be mailed to the taxpayer and the agency advising them of the date, time and location of hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to and granted by the Executive Director of the Board of Tax Appeals to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the executive director or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(6) At any hearing before the Board of Tax Appeals on an appeal of an order of the board of review affirming a tax assessment, refund claim denial or denial of waiver of a tag penalty, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall try the issues presented, according to the law and the facts and pursuant to any guidelines established by regulation. The rules of evidence shall be relaxed at the hearing. Any appeal to chancery court from an order of the Board of Tax Appeals resulting from this type of hearing shall include a full evidentiary judicial hearing on the issues presented. No official transcript shall be made of this hearing before the Board of Tax Appeals. After reaching a decision on the issues presented, the Board of Tax Appeals shall enter its order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the taxpayer and the agency. If the order involves an appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty.

(7) If in its order the Board of Tax Appeals orders a taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date of the

order, pay the amount ordered to be paid or properly appeal the order of the Board of Tax Appeals to chancery court as provided in Section 27-77-7. After the sixty-day period, if the tax determined by the Board of Tax Appeals to be due is not paid and an appeal from the Board of Tax Appeals order has not been properly filed, the agency shall proceed to collect the tax assessment as affirmed by the Board of Tax Appeals. If in its order the Board of Tax Appeals determines that the taxpayer has overpaid his taxes and an appeal from the board of tax appeals order has not been properly filed in chancery court, the agency shall refund or credit to the taxpayer, as provided by law, the amount of overpayment as determined and set out in the order.

(8) At any time after the filing of an appeal to the board of review or from the board of review to the Board of Tax Appeals under this section, an appeal can be withdrawn. Such a withdrawal of an appeal may be made voluntarily by the taxpayer or may occur involuntarily as a result of the taxpayer failing to appear at a scheduled hearing, failing to make a written submission or electronic transmission in lieu of attendance at a hearing by the date specified or by the hearing date, if no date was specified, or by any other act or failure that the board of review or the Board of Tax Appeals determines represents a failure on the part of the taxpayer to prosecute his appeal. Any voluntary withdrawal shall be in writing or by electronic transmission and sent by the taxpayer or his designated representative to the chairman of the board of review, if the appeal being withdrawn is to the board of review, or to the executive director, if the appeal being withdrawn is to the Board of Tax Appeals. If the withdrawal of appeal is involuntary, the administrative appeal body from whom the appeal is being withdrawn shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn, whether voluntary or involuntary, the action from which the appeal was taken, whether a tax assessment, a denial of refund claim, a denial of waiver of tax penalty, or an order of the board of review, shall become final and not subject to further review by the board of review, the Board of Tax Appeals or a court. The agency shall then proceed in accordance with law based on such final action.

(9) Nothing in this section shall bar a taxpayer from timely applying to the commissioner as otherwise provided by law for a tax refund or for a revision in tax.

[Effective from and after January 1, 2015, this section will read:]

(1) Any taxpayer aggrieved by an assessment of tax by the agency, by the agency's denial of a refund claim, by the denial of a waiver of tag penalty, or the denial of a claim to tax credits or incentives, and who wishes to contest the action of the agency shall, within sixty (60) days from the date the agency mailed or delivered written notice of the action, file an appeal in writing with the Board of Review requesting a hearing and correction of the contested action specifying in detail the relief requested and any other information that might be required by regulation. Even after an appeal is filed with the Board of Review, the agency retains the authority to change the assessment, the denial of refund claim or the denial of tag penalty being appealed.

(2) Upon receipt of a timely written appeal from a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, a hearing shall be scheduled before the Board of Review unless it is determined that the relief requested in the written appeal should be granted without a hearing. A notice of the hearing shall be mailed to the taxpayer advising the taxpayer of the date, time and location of the hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to, and granted by, the Board of Review to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the Board of Review or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(3) At a hearing before the Board of Review on a tax assessment, denial of refund claim, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, the Board of Review shall try the issues presented, according to law and the facts and within the guidelines established by regulation. The hearing before the Board of Review shall be informal and no official transcript will be made of the hearing. At the earliest practical date after the hearing, the members of the Board of Review that heard the appeal shall make a determination on the matter presented and notify the taxpayer of its findings by mailing a copy of its order to the taxpayer. If the order involves the appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty. If in the order the Board of Review orders the taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date the Board of Review mailed the order, pay the amount ordered to be paid or appeal the order of the Board of Review to the Board of Tax Appeals. After the sixty-day period, if an appeal is not filed by the taxpayer with the Executive Director of the Board of Tax Appeals and the tax determined by the Board of Review is not paid, the agency shall proceed to collect the tax assessment as determined by the Board of Review.

(4) Any taxpayer aggrieved by an order of the Board of Review affirming a tax assessment, the denial of a refund claim, the denial of a waiver of tag penalty, or the denial of a claim to tax credits or incentives, and who wishes to contest the order shall, within sixty (60) days from the date the Board of Review mailed the order being contested, file an appeal to the Board of Tax Appeals. The appeal shall be in writing and shall request a hearing and reversal or modification of the order of the Board of Review, specify in detail the relief requested and contain any other information that might be required by regulation, and be filed with the executive director. At the time of filing his appeal with the executive director, the taxpayer shall also file a copy of his written appeal with the Board of Review. Even after an appeal is filed with the Executive Director of the Board of Tax Appeals, the Board of Review retains the authority to amend and/or correct the order being appealed at any time prior to a decision by the Board of Tax Appeals on the appeal. Failure to timely

file a written appeal with the executive director within the sixty-day period shall make the order of the Board of Review final and not subject to further review by the Board of Tax Appeals or a court, other than as to the issue of whether a written appeal from the order of the Board of Review was timely filed with the executive director. If the Board of Review shall not issue an order within six (6) months of a hearing, the taxpayer may treat the failure to issue an order as a denial of the relief requested in the hearing and appeal such deemed denial to the Board of Tax Appeals as provided in this section. A taxpayer's filing or failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal with the Board of Tax Appeals upon the Board of Review's issuance of a subsequent order in the manner provided for in this section.

(5) Upon receipt of a written appeal from an order of the Board of Review affirming a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, the executive director shall schedule a hearing before the Board of Tax Appeals on the appeal. A notice of this hearing shall be mailed to the taxpayer and the agency advising them of the date, time and location of hearing. The taxpayer or his designated representative shall attend the hearing unless a request is made to and granted by the Executive Director of the Board of Tax Appeals to allow the taxpayer to submit his position in writing or by electronic transmission in lieu of attendance. Failure of the taxpayer or his designated representative to attend a hearing or to submit his position in writing or by electronic transmission by the date specified by the executive director or by the hearing date, if no date was specified, shall constitute a withdrawal of the appeal.

(6)(a) At any hearing before the Board of Tax Appeals on an appeal of an order of the Board of Review affirming a tax assessment, refund claim denial, denial of waiver of a tag penalty, or the denial of a claim to tax credits or incentives, two (2) members of the Board of Tax Appeals shall constitute a quorum. At the hearing, the Board of Tax Appeals shall conduct a hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions of the Department of Revenue being appealed, according to the law and the facts and pursuant to any procedural guidelines established by regulation.

(b) At a hearing of any action brought under this section, the Board of Tax Appeals shall give no deference to the decision of the Board of Review, but shall give deference to the department's interpretation and application of the statutes as reflected in duly enacted regulations and other officially adopted publications. The Board of Tax Appeals shall conduct a hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions being appealed. The Board of Tax Appeals shall decide all factual and legal questions presented, including those as to legality and the amount of tax or refund due as well as whether and to what extent the imposition of interest and/or penalties is warranted under the facts of the case, and if it finds that the tax assessment, denial of refund claim or other action of the agency in issue is incorrect or

invalid, in whole or in part, it shall determine the amount of tax or refund due, including interest and, if applicable, penalty to date, and enter such order or judgment as it deems proper. Interest and penalty included in this determination shall be computed by the Board of Tax Appeals based on the methods for computing penalty and interest as specified by law for the type of tax in issue, and the Board of Tax Appeals shall have the same discretion as the commissioner in determining whether and to what extent such amounts are warranted under the facts of the case. The rules of evidence shall be relaxed at the hearing.

(c) Any appeal to chancery court from an order of the Board of Tax Appeals resulting from this type of hearing shall include a full evidentiary judicial hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the department's action being appealed. No official transcript shall be made of this hearing before the Board of Tax Appeals.

(d) After reaching a decision on the issues presented, the Board of Tax Appeals shall enter its order setting forth its findings and decision on the appeal. A copy of the order of the Board of Tax Appeals shall be mailed to the taxpayer and the agency. If the order involves an appeal of a denial of a waiver of tag penalty, a copy of the order shall also be mailed to the tax collector that imposed the penalty.

(e) If the Board of Tax Appeals shall not issue an order within nine (9) months of a hearing, the taxpayer may treat the failure to issue an order as a denial of the relief requested in the hearing and appeal such deemed denial to the chancery court as provided in Section 27-77-7. A taxpayer's filing or failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal with the chancery court upon the Board of Tax Appeals' issuance of a subsequent order in the manner provided for in Section 27-77-7.

(7) If in its order the Board of Tax Appeals orders a taxpayer to pay a tax assessment, the taxpayer shall, within sixty (60) days from the date the Board of Tax Appeals mailed the order, pay the amount ordered to be paid or properly appeal the order of the Board of Tax Appeals to chancery court as provided in Section 27-77-7. After the sixty-day period, if the tax determined by the Board of Tax Appeals to be due is not paid and an appeal from the Board of Tax Appeals order has not been properly filed, the agency shall proceed to collect the tax assessment as affirmed by the Board of Tax Appeals. If in its order the Board of Tax Appeals determines that the taxpayer has overpaid his taxes and an appeal from the Board of Tax Appeals order has not been properly filed in chancery court, the agency shall, within sixty (60) days from the date the Board of Tax Appeals mailed its order, refund or credit to the taxpayer, as provided by law, the amount of overpayment as determined and set out in the order.

(8) At any time after the filing of an appeal to the Board of Review or from the Board of Review to the Board of Tax Appeals under this section, an appeal can be withdrawn. Such a withdrawal of an appeal may be made voluntarily by

the taxpayer or may occur involuntarily as a result of the taxpayer failing to appear at a scheduled hearing, failing to make a written submission or electronic transmission in lieu of attendance at a hearing by the date specified or by the hearing date, if no date was specified, or by any other act or failure that the Board of Review or the Board of Tax Appeals determines represents a failure on the part of the taxpayer to prosecute his appeal. Any voluntary withdrawal shall be in writing or by electronic transmission and sent by the taxpayer or his designated representative to the chairman of the Board of Review, if the appeal being withdrawn is to the Board of Review, or to the executive director, if the appeal being withdrawn is to the Board of Tax Appeals. If the withdrawal of appeal is involuntary, the administrative appeal body from whom the appeal is being withdrawn shall note on its minutes the involuntary withdrawal of the appeal and the basis for the withdrawal. Once an appeal is withdrawn, whether voluntary or involuntary, the action from which the appeal was taken, whether a tax assessment, a denial of refund claim, a denial of waiver of tax penalty, or the denial of a claim to tax credits or incentives, or an order of the Board of Review, shall become final and not subject to further review by the Board of Review, the Board of Tax Appeals or a court, other than as to the issue of whether a taxpayer's actions or inactions constituted a failure on the part of the taxpayer to prosecute his appeal. The agency shall then proceed in accordance with law based on such final action.

(9) Nothing in this section shall bar a taxpayer from timely applying to the commissioner as otherwise provided by law for a tax refund or for a revision in tax.

(10) Any appeal or other filing with the Board of Review or Board of Tax Appeals pursuant to this section shall be considered timely if it is hand delivered during the regular office hours of the recipient by the due date of such filing, or if it is mailed, postmarked or shipped by such due date. Any appeal or other filing to the Board of Review or Board of Tax Appeals pursuant to this section shall also be considered timely if electronically transmitted via electronic mail, electronic filing or facsimile by midnight of the due date for such filing. The timeliness of such electronic filing shall be determined in all instances based on the local time zone of the recipient. If the due date for any appeal or other filing with the Board of Review or Board of Tax Appeals should fall on a Saturday, Sunday, official state holiday, or other day on which the Department of Revenue or Board of Tax Appeals is closed, the due date for the filing shall be the next business day in which the Department of Revenue or Board of Tax Appeals is open.

SOURCES: Laws, 2005, ch. 499, § 3; Laws, 2009, ch. 492, § 114; Laws, 2014, ch. 476, § 16, effective from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 19, effective January 1, 2015, provides:

"SECTION 19. Nothing in Sections 15, 16 or 17 of this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or claim for tax credits or incentives or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective. The provisions of the laws relating

to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or claim for tax credits or incentives where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective."

Sections 15, 16 and 17 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-77-1, 27-77-5 and 27-77-7. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2014 amendment (ch. 476), effective January 1, 2015, added (6)(b), (6)(e), and (10); inserted "or the denial of a claim to tax credits or incentives" following "tag penalty" throughout; inserted "the agency mailed or delivered written notice" in the first sentence of (1); substituted "the Board of Review mailed" for "of" in (3) and for "written notice of" in (4); deleted "of the Board of Review" preceding "being contested, file an appeal" near the end of the first sentence and added the last two sentences in (4); substituted "conduct a hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions of the Department of Revenue being appealed" for "try the issues presented" and inserted "procedural" in the second sentence of (6)(a); substituted "all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the department's action being appealed" for "the issues presented" in (6)(c); substituted "the Board of Tax Appeals mailed" for "of" in the first sentence and inserted "within sixty (60) days from the date the Board of Tax Appeals mailed its order" in the last sentence of (7); and inserted "other than as to the issue of whether a taxpayer's actions or in actions constituted a failure on the part of the taxpayer to prosecute his appeal" at the end of the second to last sentence in (8).

§ 27-77-7. Judicial review of Board of Tax Appeals' findings and order; petition; surety bond; payment under protest in lieu of bond; payment of uncontested tax by taxpayer; payment of uncontested overpayment by agency; issuance of summons; trial; appeals of chancery court order to Supreme Court.

[Effective until January 1, 2015, this section will read:]

(1) The findings and order of the Board of Tax Appeals entered under Section 27-77-5 shall be final unless the agency or the taxpayer shall, within sixty (60) days from the date of the order, file a petition in the chancery court appealing the order. If the petition under this subsection is filed by the taxpayer, the petition shall be filed against the Department of Revenue as respondent. If the petition under this subsection is filed by the agency, the petition shall be filed against the taxpayer as respondent. The petition shall contain a concise statement of the facts as contended by the petitioner, identify the order from which the appeal is being taken and set out the type of relief sought. If in the action, the taxpayer is seeking a refund or credit for an alleged overpayment of tax or for taxes paid in protest under subsection (3) of this section, the taxpayer shall allege in the petition or in his answer, where the appeal is filed by the agency, that he alone bore the burden of the tax sought to be refunded or credited and did not directly or indirectly collect the tax from

anyone else. The respondent to the petition has thirty (30) days from the date of service of the petition to file a cross-appeal.

(2) A petition under subsection (1) of this section shall be filed in the chancery court of the county or judicial district in which the taxpayer has a place of business or in the Chancery Court of the First Judicial District of Hinds County, Mississippi; however, a resident taxpayer may file the petition in the chancery court of the county or judicial district in which he is a resident. If both the agency and the taxpayer file a petition under subsection (1) of this section, the appeals shall be consolidated and the chancery court where the taxpayer filed his petition shall have jurisdiction over the consolidated appeal.

(3) A petition filed by a taxpayer under subsection (1) of this section that appeals an order of the Board of Tax Appeals affirming a tax assessment shall be accompanied by a surety bond approved by the clerk of the court in a sum half the amount in controversy, conditioned to pay the judgment of the court. The clerk shall not approve a bond unless the bond is issued by a surety company qualified to write surety bonds in this state. Notwithstanding the above bond requirement, the chancellor retains jurisdiction, after motion, notice and hearing, to reduce the amount of the bond provided herein or to forego the bond in its entirety if he finds that the interest of the state to obtain payment of the taxes, penalties and interest in issue in the appeal are otherwise protected. As an alternative to the posting of bond, a taxpayer appealing an order of the Board of Tax Appeals affirming a tax assessment may, prior to the filing of the petition, pay to the agency, under protest, the amount ordered by the Board of Tax Appeals to be paid and seek a refund of such taxes, plus interest thereon, in the appeal. The taxpayer shall pay to the agency any tax included in the assessment which he is not contesting. If the petition initiating the appeal is filed by the taxpayer, the payment of the uncontested tax shall be made prior to the expiration of the sixty-day time period for filing a petition under subsection (1) of this section. If the petition initiating the appeal is filed by the agency, the payment of the uncontested tax shall be made prior to the expiration of the sixty-day time period for the filing of the petition. Failure of the taxpayer to timely pay the uncontested tax shall bar the taxpayer from obtaining a reduction, abatement and/or refund of any contested tax in the appeal and shall result in the taxpayer's appeal or cross-appeal being dismissed with prejudice and with judgment being entered granting the agency the relief it requested.

(4) In an action under this section resulting from an order of the Board of Tax Appeals involving a refund claim denial, the agency shall refund or credit to the taxpayer, as provided by law, the amount of any overpayment included in the refund claim which the agency does not contest. If the petition initiating the appeal is filed by the agency, the uncontested overpayment shall be paid or credited to the taxpayer prior to the expiration of the sixty-day time period for filing a petition under subsection (1) of this section. If the petition initiating the appeal is filed by the taxpayer, such uncontested overpayment shall be paid or credited to the taxpayer prior to the expiration of the thirty-day time period for the filing of an answer or other response to the petition as provided in

subsection (5) of this section. Failure of the agency to timely pay or credit the uncontested overpayment to the taxpayer shall bar the agency from obtaining an affirmation, in whole or in part, of the refund claim denial in issue and shall result in the agency's appeal or cross-appeal being dismissed with prejudice and judgment being entered granting the taxpayer the relief he requested, excluding however any request for the awarding of attorney fees.

(5) Upon the filing of the petition under subsection (1) of this section, the clerk of the court shall issue a summons to the respondent requiring the respondent to answer or otherwise respond to the petition within thirty (30) days of service. Where the agency is the respondent, the summons shall be served on the agency by personal service on the commissioner as the chief executive officer of the agency. The chancery court in which a petition under subsection (1) of this section is properly filed shall have jurisdiction to hear and determine the cause or issues joined as in other cases. In any petition, cross-appeal or answer in which the taxpayer is seeking a refund or credit for an alleged overpayment of tax or for taxes paid under protest under subsection (3) of this section, the taxpayer shall prove by a preponderance of the evidence that he alone bore the burden of the tax sought to be refunded or credited and did not directly or indirectly collect the tax from anyone else. At trial of any action brought under this section, the chancery court shall give deference to the decision and interpretation of law and regulations by the Department of Revenue as it does with the decisions and interpretation of any administrative agency, but it shall try the case de novo and conduct a full evidentiary judicial hearing on the issues raised. Based on the evidence presented at trial, the chancery court shall determine whether the party bringing the appeal has proven by a preponderance of the evidence or a higher standard if required by the issues raised, that he is entitled to any or all of the relief he has requested. The chancery court shall decide all questions presented, including those as to legality and the amount of tax or refund due, and if it finds that the tax assessment or denial of refund claim in issue is incorrect or invalid, in whole or in part, it shall determine the amount of tax or refund due, including interest and, if applicable, penalty to date, and enter such order or judgment as it deems proper. Interest and penalty included in this determination shall be computed by the court based on the methods for computing penalty and interest as specified by law for the type of tax in issue. When the chancery court determines that an overpayment exists, the determination as to whether such overpayment shall be refunded to the taxpayer or credited against the taxpayer's future taxes shall be made by the chancery court based on the method for handling overpayments as specified by the law for the type of tax in issue. Either the agency or the taxpayer, or both, shall have the right to appeal from the order of the chancery court to the Supreme Court as in other cases. If an appeal is taken from the order of the chancery court, the bond provided for in subsection (3) of this section shall continue to remain in place until a final decision is rendered in the case.

[Effective from and after January 1, 2015, this section will read:]

(1) The findings and order of the Board of Tax Appeals entered under Section 27-77-5 shall be final unless the agency or the taxpayer shall, within sixty (60) days from the date the Board of Tax Appeals mailed the order, file a petition in the chancery court appealing the order. If the petition under this subsection is filed by the taxpayer, the petition shall be filed against the Department of Revenue as respondent. If the petition under this subsection is filed by the agency, the petition shall be filed against the taxpayer as respondent. The petition shall contain a concise statement of the facts as contended by the petitioner, identify the order from which the appeal is being taken and set out the type of relief sought. If in the action, the taxpayer is seeking a refund or credit for an alleged overpayment of any tax other than individual or corporate income tax or franchise tax, the taxpayer shall allege in the petition or in his answer, where the appeal is filed by the agency, that he alone bore the burden of the tax sought to be refunded or credited and did not directly or indirectly collect the tax from anyone else; however, this requirement shall not apply in any case involving a claim for incentives based on payroll withholding or other incentives, rebates or other economic benefits the computation of which is based, in whole or in part, upon taxes withheld or paid. The respondent to the petition has thirty (30) days from the date of service of the petition to file a cross-appeal.

(2) A petition under subsection (1) of this section shall be filed in the chancery court of the county or judicial district in which the taxpayer has a place of business or in the Chancery Court of the First Judicial District of Hinds County, Mississippi; however, a resident taxpayer may file the petition in the chancery court of the county or judicial district in which he is a resident. If both the agency and the taxpayer file a petition under subsection (1) of this section, the appeals shall be consolidated and the chancery court where the taxpayer filed his petition shall have jurisdiction over the consolidated appeal.

(3) Unless otherwise ordered by the chancery court upon motion by the agency, no taxpayer appealing an order of the Board of Tax Appeals under this section shall be required to post security or a bond, or otherwise pay to the agency, under protest or otherwise, any contested taxes, interest, penalties or other amounts. After a petition or cross-appeal is filed by a taxpayer under this section, if the agency believes that its ability to obtain payment from the taxpayer of the taxes, penalties and interest in issue is jeopardized by its inability to proceed with collection due to the filing of the appeal or cross-appeal by the taxpayer or if the agency believes that the appeal or cross-appeal is being brought to delay payment of the taxes, penalties or interest in issue, the agency may move the chancery court to require the taxpayer to post a bond or other adequate security for the payment of any judgment of the court. Upon consideration of such motion, after notice and hearing, the chancellor shall determine whether a bond or other security is needed to protect the interest of the state in regard to the timely payment of the taxes, penalties and interest in issue. If the chancellor determines that a bond or other security is necessary to protect the interest of the state, the chancellor shall provide the taxpayer

sixty (60) days from the date that he enters an order on the motion to post with the clerk of the court the bond or other security that the chancellor determines is needed to protect the state's interest. To avoid the accruing of additional penalty and interest while an appeal is pending, a taxpayer appealing an order of the Board of Tax Appeals affirming a tax assessment may, prior to the filing of the petition, pay to the agency, under protest, the amount ordered by the Board of Tax Appeals to be paid and seek a refund of such taxes, plus interest thereon, in the appeal. The taxpayer shall pay to the agency any tax included in the assessment which he is not contesting. If the petition initiating the appeal is filed by the taxpayer, the payment of the uncontested tax shall be made prior to the expiration of the sixty-day time period for filing a petition under subsection (1) of this section or the commissioner may institute collection proceedings for such uncontested amount. If the petition initiating the appeal is filed by the agency, the payment of the uncontested tax shall be made prior to the expiration of the sixty-day time period for the filing of the petition. Failure of the taxpayer to timely pay the uncontested tax shall not bar the taxpayer from obtaining a reduction, abatement and/or refund of any contested tax in the appeal and shall not result in the taxpayer's appeal or cross-appeal being dismissed or delayed or judgment being entered granting the agency the relief it requested.

(4) In an action under this section resulting from an order of the Board of Tax Appeals involving a refund claim denial, the agency shall refund or credit to the taxpayer, as provided by law, the amount of any overpayment included in the refund claim which the agency does not contest. If the petition initiating the appeal is filed by the agency, the uncontested overpayment shall be paid or credited to the taxpayer prior to the expiration of the sixty-day time period for filing a petition under subsection (1) of this section. If the petition initiating the appeal is filed by the taxpayer, such uncontested overpayment shall be paid or credited to the taxpayer prior to the expiration of the thirty-day time period for the filing of an answer or other response to the petition as provided in subsection (5) of this section. Failure of the agency to timely pay or credit the uncontested overpayment to the taxpayer shall bar the agency from obtaining an affirmation, in whole or in part, of the refund claim denial in issue until the payment or claim is made, but shall not result in the agency's appeal or cross-appeal being dismissed or judgment being entered granting the taxpayer the relief he requested.

(5) Upon the filing of the petition under subsection (1) of this section, the clerk of the court shall issue a summons to the respondent requiring the respondent to answer or otherwise respond to the petition within thirty (30) days of service. Where the agency is the respondent, the summons shall be served on the agency by personal service on the commissioner as the chief executive officer of the agency. The chancery court in which a petition under subsection (1) of this section is properly filed shall have jurisdiction to hear and determine the cause or issues joined as in other cases. In any petition, cross-appeal or answer in which the taxpayer is seeking a refund or credit for an alleged overpayment of any tax other than individual or corporate income

tax or franchise tax the taxpayer shall prove by a preponderance of the evidence that he alone bore the burden of the tax sought to be refunded or credited and did not directly or indirectly collect the tax from anyone else; however, this requirement shall not apply in any case involving a claim for incentives based on withholding taxes or other incentives, rebates or other economic benefits the computation of which is based, in whole or in part, upon taxes withheld or paid. At trial of any action brought under this section, the chancery court shall give no deference to the decision of the Board of Tax Appeals, the Board of Review or the Department of Revenue, but shall give deference to the department's interpretation and application of the statutes as reflected in duly enacted regulations and other officially adopted publications. The chancery court shall try the case de novo and conduct a full evidentiary judicial hearing on all factual and legal issues raised by the taxpayer which address the substantive or procedural propriety of the actions of the Department of Revenue being appealed. The chancery court is expressly prohibited from trying any action filed pursuant to this section using the more limited standard of review specified for appeals in Section 27-77-13 of this chapter. Based on the evidence presented at trial, the chancery court shall determine whether the party bringing the appeal has proven by a preponderance of the evidence or a higher standard if required by the issues raised, that he is entitled to any or all of the relief he has requested. The chancery court shall decide all factual and legal questions presented, including those as to legality and the amount of tax, refund, tax credit or tax incentive due as well as whether and to what extent the imposition of interest and/or penalties are warranted under the facts of the case, and if it finds that the tax assessment, denial of the claim for a tax refund, tax credit or tax incentive or other action of the agency in issue is incorrect or invalid, in whole or in part, it shall determine the amount of tax or refund due, including interest and, if applicable, penalty to date, and enter such order or judgment as it deems proper. Interest and penalty included in this determination shall be computed by the court based on the methods for computing penalty and interest as specified by law for the type of tax in issue, and the court shall have the same discretion as the commissioner in determining whether and to what extent such amounts are warranted under the facts of the case. When the chancery court determines that an overpayment exists, the determination as to whether such overpayment shall be refunded to the taxpayer or credited against the taxpayer's future taxes shall be made by the chancery court based on the method for handling overpayments as specified by the law for the type of tax in issue. Either the agency or the taxpayer, or both, shall have the right to appeal from the order of the chancery court to the Supreme Court as in other cases. If an appeal is taken from the order of the chancery court, any bond or other security required to be posted by order of the chancery court shall continue to remain in place until a final decision is rendered in the case.

SOURCES: Laws, 2005, ch. 499, § 4; Laws, 2009, ch. 492, § 115; Laws, 2014, ch. 476, § 17, effective from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 19, effective January 1, 2015, provides: "SECTION 19. Nothing in Sections 15, 16 or 17 of this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty or claim for tax credits or incentives or the administrative appeal or judicial appeal thereof where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review of any assessment, refund claim, request for waiver of a tag penalty or claim for tax credits or incentives where the initial date of said assessment, refund claim, tag penalty, claim for tax credits or incentives is before the date on which this act becomes effective."

Sections 15, 16 and 17 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-77-1, 27-77-5 and 27-77-7. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Amendment Notes — The 2014 amendment, effective January 1, 2015, rewrote the section.

JUDICIAL DECISIONS

1. Burden of proof.
2. Tax appeal.

1. Burden of proof.

Chancery court properly limited its analysis to determining whether a taxpayer had proven that it was entitled to reversal of the Mississippi State Tax Commission's decision for any of the prescribed legal bases for reversing an agency decision; under the statute, the chancery court must hold a judicial hearing to determine whether the taxpayer challenging the Commission decision can prove entitlement to any or all of the relief requested by a preponderance of the evidence. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 2014 U.S. LEXIS 4578 (U.S. June 30, 2014).

Instruction to "try the case de novo" is misdirected because the statute provides a judicial forum to try anew (or for the first time) the legal issues raised by the taxpayer in chancery court. Its limited purpose is only to examine whether the Mississippi State Tax Commission's decision was supported by substantial evidence, was not arbitrary and capricious, was within the Commission's power to make, and did not violate the taxpayer's statutory or constitutional rights. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 2014 U.S. LEXIS 4578 (U.S. June 30, 2014).

Court of appeals erred by reversing a judgment on standard-of-review and burden-of-proof grounds because it improperly construed the statute as imposing a de-novo standard of review; in a taxpayer's suit in chancery court appealing a final judgment of the Mississippi State Tax Commission, as in all other judicial proceedings, the party petitioning the court for relief bears the burden of proving its claims by a preponderance of the evidence or a higher standard, if required by the issues raised. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 2014 U.S. LEXIS 4578 (U.S. June 30, 2014).

Court of appeals erred by reversing a judgment requiring a taxpayer to prove that the Mississippi State Tax Commission's decision was unsupported by substantial evidence, arbitrary and capricious, beyond its power, or in violation of a statutory or constitutional right of the taxpayer because the chancery court applied the proper standard of review and burden of proof; the statute places the burden on the taxpayer challenging a Commission decision to prove its entitle-

ment to relief. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 2014 U.S. LEXIS 4578 (U.S. June 30, 2014).

2. Tax appeal.

Chancery court properly exercised jurisdiction over a corporation's appeal of a tax assessment because the surety bond the corporation filed satisfied the statutory requirements; the bond would have been enforceable against the surety because it clearly bound the Mississippi Department of Revenue and conditioned the obligation to pay on the fact the corporation appealed the judgment of the Board of Tax Appeals. Miss. Dep't of Revenue v. Isle of Capri Casinos, Inc., 131 So. 3d 1192 (Miss. 2014).

CHAPTER 101

Annual Reports by Departments of Government and State-Supported Institutions

SEC.

§ 27-101-1. Time for closing certain annual reports; executive summaries of report.

(1) Each and every educational, eleemosynary and other institution of the State of Mississippi supported, in whole or in part, by the state, and each and every board, agency, commission and department of government, except the Departments of Insurance and of Education, shall prepare, on or before December 31 of each year, a detailed report covering the annual period ending the preceding June 30. The Insurance Department shall prepare, on or before December 31 of each year, a like report covering the annual period ending the preceding March 1. The Department of Education shall prepare, on or before December 31 of each year, a like report covering the preceding school year.

(2) Each agency, board, commission, department and institution required by this section to prepare an annual report also shall prepare an executive summary of the report that is not more than three (3) pages long.

SOURCES: Codes, Hemingway's 1917, § 3641; 1930, § 3875; 1942, § 9099; Laws, 1916, ch. 234; Laws, 1966, ch. 547, § 4; Laws, 1970, ch. 529, § 1; Laws, 1997, ch. 443, § 1; Laws, 2011, ch. 442, § 2; Laws, 2012, ch. 429, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2011 amendment substituted "a like report covering the preceding school year" for "a like report covering the annual period ending the preceding August 30" at the end of (1).

The 2012 amendment substituted "Departments of Insurance and of Education" for "Insurance and Educational departments" in the first sentence of (1).

§ 27-101-3. Transmission of reports and executive summaries.

Each annual report required by Section 27-101-1 shall be published electronically on the official website of the respective institution, board, agency, commission or department. One (1) copy of each annual report and the executive summary of the report shall be electronically transmitted to the State Librarian, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and each state elected and appointed official. Each person to whom an annual report is electronically transmitted may receive the information necessary to obtain the applicable annual report in electronic form, including instructions on how to print the report, upon request to the agency, board, commission, department or institution that prepared the report.

SOURCES: Codes, 1942, § 9099.3; Laws, 1966, ch. 547, § 5; Laws, 1970, ch. 530, § 1; Laws, 1989, ch. 321, § 6; Laws, 1997, ch. 443, § 2; Laws, 2009, ch. 343, § 1; Laws, 2012, ch. 429, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote the section.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-101-5. Publication of additional copies.

The Department of Finance and Administration may authorize the nonelectronic publication of a limited number of copies of the annual or other reports in meritorious cases.

SOURCES: Codes, 1942, § 9099.5; Laws, 1966, ch. 547, § 6; Laws, 1968, ch. 506, § 24; Laws, 1970, ch. 531, § 1; Laws, 1984, ch. 488, § 179; Laws, 1997, ch. 443, § 3; Laws, 2012, ch. 429, § 3, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "nonelectronic publication of a limited number of" for "the publication of additional."

CHAPTER 103

State Budget

JOINT LEGISLATIVE BUDGET COMMITTEE; LEGISLATIVE BUDGET OFFICE

§ 27-103-139. Submission of budget; employment of budget officer.

On or before November 15 preceding each regular session of the Legislature, except the first regular session of a new term of office, the Governor shall submit to the members of the Legislature, the Legislative Budget Office or the members-elect, as the case may be, and to the executive head of each state agency a balanced budget for the succeeding fiscal year. The budget submitted shall be prepared in a format that will include performance measurement data associated with the various programs operated by each agency. The total proposed expenditures in the balanced budget shall not exceed the amount of estimated revenues that will be available for appropriation or use during the succeeding fiscal year, including any balances that will be on hand at the close of the then current fiscal year, as determined by the revenue estimate jointly adopted by the Governor and the Legislative Budget Committee. The total proposed expenditures from the State General Fund in the balanced budget shall not exceed ninety-eight percent (98%) of the amount of general fund revenue estimate for the succeeding fiscal year, plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year. However, for fiscal years 2010, 2011 and 2012 only, the total proposed expenditures from the State General Fund in the balanced budget shall not exceed one hundred percent (100%) of the amount of the general fund revenue estimate for the succeeding fiscal year, plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year. The general fund revenue estimate shall be the estimate jointly adopted by the Governor and the Joint Legislative Budget Committee. Unencumbered balances in general funds that will be available and on hand at the close of the fiscal year shall not include projected amounts required to be deposited into the Working Cash-Stabilization Reserve Fund and the Education Enhancement Fund under Section 27-103-203.

The revenues used in preparing the balanced budget shall be only those revenues that will be available under the general laws of the state as they exist when the balanced budget is prepared, and shall not include any proposed revenues that would become available only after the enactment of new legislation. If the Governor has any recommendations for additional proposed expenditures or proposed revenues that are not included in his balanced budget, he shall submit those recommendations in a supplement that is separate from his balanced budget, and whenever the Governor recommends any such additional proposed expenditures, he also shall recommend proposed revenues that are sufficient to fund the additional proposed expenditures, providing specific details regarding the sources and the total amount of those proposed revenues.

The Governor may employ a budget officer for the purpose of receiving information from the State Fiscal Officer and preparing his recommendations on the budget. If the Governor determines that information received from the State Fiscal Officer is not sufficient to enable him to prepare his budget

recommendations, he may request an appropriation from the Legislature to provide additional staff within the Governor's office for that purpose. At the first regular session after his election for Governor, the Governor shall submit any budget recommendations plus the required revenue source recommendations no later than January 31 of that year.

SOURCES: Laws, 1984, ch. 488, § 74; Laws, 1986, ch. 500, § 11; Laws, 1989, ch. 532, § 50; Laws, 1991, ch. 426, § 1; Laws, 1992, ch. 484, § 13; Laws, 1993, ch. 509, § 3; Laws, 1994, ch. 602, § 4; Laws, 2001, ch. 336, § 2; Laws, 2003, ch. 507, § 2; Laws, 2004, ch. 595, § 2; Laws, 2005, 2nd Ex Sess, ch. 2, § 2; Laws, 2009, ch. 563, § 2; Laws, 2010, ch. 562, § 2, eff from and after passage (approved May 21, 2010).

Joint Legislative Committee Note — Section 12 of Chapter 517, Laws of 2014, amended this section by adding a second paragraph, which read: "The budget submitted by the Governor shall include the information and recommendations required by Section 6 of this act." Section 6 of the act, referenced in this paragraph, was in the bill as introduced but was removed from the bill before final passage. As there is no corresponding section to change the reference to, the language has been removed from the section at the direction of the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The Joint Committee ratified the deletion of this language at its July 1, 2014, meeting.

MISSISSIPPI PERFORMANCE BUDGET AND STRATEGIC PLANNING ACT OF 1994

SEC.

§ 27-103-153. Appropriation bills to include performance targets; performance measurement data to be maintained and reported.

(1) Beginning with the 1996 fiscal year, the appropriation bills enacted to provide funding for each state agency or institution shall include performance targets for each performance measure established for each program within each such agency. Said performance targets shall be established annually by the Legislature and shall be based upon the funding level authorized for each agency within its appropriation bill. The Department of Finance and Administration shall provide accounting system services to each agency to allow both program expenditures and performance measurement data to be maintained and reported in such form and in such detail as may be required by the Joint Legislative Budget Committee.

(2) As provided in Section 27-103-159, the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation may be exempted from the requirements of this section.

SOURCES: Laws, 1994, ch. 602, § 5; Laws, 2014, ch. 444, § 2, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (2).

§ 27-103-155. Evaluation of performance accomplishments; funding; reports; agency five-year strategic plans; Legislature review.

(1) Beginning with the 1995 fiscal year, the Legislature shall make available funds for the employment of such persons as may be required to conduct an evaluation of the actual performance accomplishments of each agency and its programs in comparison to the targeted performance levels established within the appropriation bill for each agency and its programs. The results of such evaluations shall be prepared in such form and in such detail as may be required by the Joint Legislative Budget Committee. Beginning with the 1996 fiscal year, the Legislative Budget Office and the Department of Finance and Administration shall review the five-year strategic plans submitted by each agency as an addendum to its budget request and shall make copies of said plans available to the Legislature for review and consideration.

(2) As provided in Section 27-103-159, the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation may be exempted from the requirements of this section, except for those requiring the production of agency strategic plans.

SOURCES: Laws, 1994, ch. 602, § 6; Laws, 2014, ch. 444, § 3, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added (2).

§ 27-103-159. Certain state departments required to provide inventory of programs and activities; components of inventory.

(1) For purposes of this section, the following terms shall have the following meanings ascribed to them:

(a) "Evidence-based program" shall mean a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(b) "Research-based program" shall mean a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(c) "Promising practices" shall mean a practice that presents, based upon preliminary information, potential for becoming a research-based or evidence-based program or practice.

(d) "Other programs and activities" shall mean all programs and activities that do not fit the definition of evidence-based, research-based or promising practices programs.

(e) "Program inventory" shall mean the complete list of all agency programs and activities that meet any definition set out in this section.

(f) "Program catalogue" means a compendium of programs compiled by a reputable source that publishes information for use by the government.

(2) Beginning with the fiscal year 2016 budget cycle, the Legislative Budget Office shall require the Department of Corrections, the Department of Health, the Department of Education, and the Department of Transportation to comply with the requirements of this section respecting the inventorying of agency programs and activities for use in the budgeting process. The aforementioned agencies shall submit all program information to the Legislative Budget Office in accordance with any policies established by that office setting out requirements for any filings required under this section.

(3) The Legislative Budget Office, the PEER Committee staff, and personnel of each of the agencies set out in this section shall review the programs of each agency and shall:

(a) Establish an inventory of agency programs and activities;

(b) Categorize all agency programs and activities as evidence-based, research-based, promising practices, or other programs and activities with no evidence of effectiveness, and compile them into an agency program inventory. In categorizing programs, the staffs may consult the Washington State Institute for Public Policy's Evidence Based Practices Institute's program catalogue or any other comparable catalogue of evidence-based, research-based, promising practices, or other programs and activities;

(c) Identify agency and program premises, goals, objectives, outcomes and outputs, as well as any other indicator or component the staffs consider to be appropriate;

(d) Establish a procedure for base-lining programs which are built around promising practices or other programs that do not meet the definition of evidence-based or research-based programs, so that further research can be conducted to gauge the program's effectiveness;

(e) Describe any methodologies used to develop any program which is neither evidence-based or research-based; and

(f) Establish a procedure for determining cost-benefit ratios for all programs of each agency.

(4) The Legislative Budget Office shall report to the Legislative Budget Committee the results of all activities required by this section with recommendations as to how this information can be incorporated into budget recommendations and the appropriations process. The Legislative Budget Committee may incorporate such recommendations into the fiscal year 2017 budget and appropriations bills, or delay such incorporation until the committee is satisfied that the information collected and inventoried under the requirements of this bill will enhance accountability and performance measurement for the programs and activities of state agencies.

(5) Beginning in the fiscal year 2017 budget cycle, the Department of Corrections, the Department of Education, the Department of Health and the Department of Transportation may be exempted from the requirement to prepare any information required by Section 27-103-153 and Section 27-103-155, Mississippi Code of 1972, except for the strategic planning requirements of Section 27-103-155.

(6) The Legislative Budget Committee shall, no later than the 2019 Regular Session of the Legislature, make a recommendation to the Legislature regarding the application of the processes and requirements of this section to all agencies of state government.

SOURCES: Laws, 2014, ch. 444, § 1, eff from and after July 1, 2014.

Federal Aspects — Equal pay provisions of the Equal Pay Act of 1963, see 29 USCS § 206(d).

Fair pay provisions of the Civil Rights Act of 1964, see 42 U.S.C. § 2000e-2.

Americans with Disabilities Act of 1990 generally, see 42 USCS § 12101 et seq.

BUDGET REFORM ACT OF 1992

SEC.

§ 27-103-211. Limit on legislative appropriation from General Fund.

The total sum appropriated by the Legislature from the State General Fund for any fiscal year shall not exceed ninety-eight percent (98%) of the general fund revenue estimate for that fiscal year developed by the Department of Revenue and the University Research Center and adopted by the Joint Legislative Budget Committee, plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year. The unencumbered balances in general funds that will be available and on hand at the close of the fiscal year shall not include projected amounts required to be deposited into the Working Cash-Stabilization Reserve Fund under Section 27-103-203. However, for fiscal years 2010, 2011, 2012, and 2015 only, the total sum appropriated by the Legislature from the State General Fund shall not exceed one hundred percent (100%) of the amount of the general fund revenue estimate for that fiscal year, plus any unencumbered balances in general funds that will be available and on hand at the close of the then current fiscal year.

SOURCES: Laws, 1992, ch. 484, § 11; Laws, 1993, ch. 509, § 5; Laws, 2001, ch. 518, § 5; Laws, 2003, ch. 507, § 3; Laws, 2004, ch. 595, § 3; Laws, 2005, 2nd Ex Sess, ch. 2, § 3; Laws, 2008, ch. 507, § 3; Laws, 2009, ch. 563, § 3; Laws, 2010, ch. 562, § 3; Laws, 2014, ch. 534, § 9, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 534, § 10 provides:

"SECTION 10. This act shall take effect and be in force from and after July 1, 2014; however, Sections 4 through 8 of this act shall take effect and be in force from and after the passage of this act."

Amendment Notes — The 2014 amendment substituted "Department of Revenue" for "Tax Commission" near the middle of the first sentence, deleted "and" following "fiscal years 2010, 2011" and inserted "and 2015" following "2012" near the middle of the second sentence.

§ 27-103-213. Unencumbered cash balance in General Fund at the close of each fiscal year to be distributed to certain funds; order of distribution.

(1) The unencumbered cash balance in the General Fund in the State Treasury at the close of each fiscal year shall be distributed to the Municipal Revolving Fund, the Working Cash-Stabilization Reserve Fund and the Capital Expense Fund in the manner provided in this section, except for fiscal year 2014 in which the unencumbered cash balance at the close of fiscal year 2014 shall be distributed as provided in subsection (4) of this section.

(2)(a) At the end of each fiscal year, the Director of the Department of Finance and Administration and the State Treasurer shall determine the extent of the unencumbered cash balance existing in the General Fund in the State Treasury.

(b) As used in this section, the term "unencumbered cash balance" or "unencumbered General Fund cash balance" means the amount in the State General Fund after deducting all appropriations and other expenditures. However, if the Legislature has authorized additional or deficit appropriations or transfers from the State General Fund for that fiscal year, those amounts shall be subtracted from the unencumbered cash balance in the General Fund before determining the amount available for distribution. The unencumbered General Fund cash balance shall not be determined until after August 31 of each year, and it shall not be made until the State Treasurer has received a certificate in writing from the Director of the Department of Finance and Administration, with notification to the Legislative Budget Office, showing the amount of the unencumbered General Fund cash balance.

(3) If any unencumbered General Fund cash balance is available for distribution under this section, the distribution of those funds shall be made by the Director of the Department of Finance and Administration in the following order:

(a) To the Municipal Revolving Fund, an amount equal to Seven Hundred Fifty Thousand Dollars ($750,000.00); however, if the amount of the unencumbered General Fund cash balance is less than Seven Hundred Fifty Thousand Dollars ($750,000.00), then the total amount of the unencumbered General Fund cash balance shall be distributed to the Municipal Revolving Fund.

(b) To the Working Cash-Stabilization Reserve Fund, the amount of the unencumbered General Fund cash balance not distributed under paragraph

(a) until such time as the balance in the fund reaches Forty Million Dollars ($40,000,000.00).

(c) To remain in the State General Fund, an amount equal to one percent (1%) of the General Fund appropriations for the fiscal year that the unencumbered General Fund cash balance represents; however, if the amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b) is less than one percent (1%) of the General Fund appropriations, then the total amount of the unencumbered General Fund cash balance not distributed under paragraphs (a) and (b) shall remain in the State General Fund. For the purposes of this paragraph (c), the appropriations for the fiscal year shall be the total amount contained in the actual appropriation bills passed by the Legislature.

(d) To the Working Cash-Stabilization Reserve Fund, fifty percent (50%) of the amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a), (b) and (c), not to exceed seven and one-half percent (7-½%) of the General Fund appropriations for the fiscal year that the unencumbered General Fund cash balance represents. For the purposes of this paragraph (d), the appropriations for the fiscal year shall be the total amount contained in the actual appropriation bills passed by the Legislature.

(e) To the Capital Expense Fund, any remaining amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a), (b), (c) and (d).

(4) For fiscal year 2014, if any unencumbered General Fund cash balance is available for distribution under this section at the close of the fiscal year, the distribution of those funds shall be made by the Director of the Department of Finance and Administration in the following order:

(a) To the Municipal Revolving Fund, an amount equal to Seven Hundred Fifty Thousand Dollars ($750,000.00); however, if the amount of the unencumbered General Fund cash balance is less than Seven Hundred Fifty Thousand Dollars ($750,000.00), then the total amount of the unencumbered General Fund cash balance shall be distributed to the Municipal Revolving Fund.

(b) To the Working Cash-Stabilization Reserve Fund, the amount of the unencumbered General Fund cash balance not distributed under paragraph (a) until such time as the balance in the fund reaches Forty Million Dollars ($40,000,000.00).

(c) To the Working Cash-Stabilization Reserve Fund, Two Hundred Eighty-six Million Nine Hundred Fifty-nine Thousand Seven Hundred Ninety-eight Dollars ($286,959,798.00) of the amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b), not to exceed seven and one-half percent (7-$^{1}/_{2}$%) of the General Fund appropriations for the fiscal year that the unencumbered General Fund cash balance represents; however, if the amount of the unencumbered General Fund cash balance is less than Two Hundred Eighty-six Million Nine Hundred Fifty-nine Thousand Seven Hundred

Ninety-eight Dollars ($286,959,798.00), then the total amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a) and (b) shall be distributed to the Working Cash-Stabilization Reserve Fund. For the purposes of this paragraph (c), the appropriations for the fiscal year shall be the total amount contained in the actual appropriation bills passed by the Legislature.

(d) To the Capital Expense Fund, any remaining amount of the unencumbered General Fund cash balance after the distributions are made under paragraphs (a), (b) and (c).

SOURCES: Laws, 2008, ch. 455, § 1; Laws, 2011, ch. 506, § 6; Laws, 2014, ch. 534, § 4, eff from and after passage (approved Apr. 24, 2014).

Editor's Note — Laws of 2014, ch. 534, § 10 provides:

"SECTION 10. This act shall take effect and be in force from and after July 1, 2014; however, Sections 4 through 8 of this act shall take effect and be in force from and after the passage of this act."

Amendment Notes — The 2011 amendment rewrote (3); and deleted former (4), which read: "In fiscal year 2009, the provisions of this section shall not be applicable until the Working Cash-Stabilization Fund, created in Section 27-103-203, balance has reached a level of funding that is seven and one-half percent (7-½%) of the General Fund appropriations for such fiscal year."

The 2014 amendment added the exception at the end of (1); and added (4).

BUDGET CONTINGENCY AND CAPITAL EXPENSE FUNDS

§ 27-103-301. Budget Contingency Fund created.

Editor's Note — Laws of 2011, ch. 506, § 1, provides:

"SECTION 1. (1) (a) During fiscal year 2011, the State Fiscal Officer shall transfer to the Budget Contingency Fund the amounts listed below from the following funds:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$52,734,878.00
Veterinary Diagnostic Laboratory Board	3427	4,416.18
Agriculture Aviation	3825	8,944.30
Boswell Regional Center-Water System Renovations	3931	54,111.31
Total		$52,802,349.79

"(b) During fiscal year 2011, the State Fiscal Officer shall transfer to the State Treasurer the amounts listed below from the following funds:

Agency/Fund	*Fund No.*	*Amount*
Research and Development/ Business Incubator		
Revolving Loan Programs	341N, 34MC, 34MN, 34MP	$5,405,057.00
Airport/Port Revitalization Revolving Loan Program	34AV, 34MP	4,812,684.00

Agency/Fund	*Fund No.*	*Amount*
Milk Producers Transportation Cost Assistance Loan Program	34AB	1,435,522.00
Moon Lake State Park 2003	346F	2,901,095.00
TOTAL		$14,554,358.00

"The State Treasurer shall use the funds transferred to him for the purpose of paying maturing bonds and interest on the full faith and credit bonds of the State of Mississippi falling due during fiscal year 2012.

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$126,873,000.00
Capital Expense Funds	399C	26,500,000.00
Hurricane Disaster Reserve Fund	3755	27,861,195.00
Working Cash-Stabilization Reserve Fund	3992	87,987,385.00
Department of Insurance	3501	10,000,000.00
DFA - Support	3147	269,185.00
Unclaimed Property Fund	3178	5,500,000.00
Public Service Commission	3811	4,004,222.00
PSC - No Call Telephone Solicitation	3813	90,247.00
PSC - Public Utilities Staff	3812	1,961,276.00
TOTAL		$291,046,510.00"

Laws of 2010, ch. 562, § 4, provides:

"SECTION 4. (1)(a) During fiscal year 2010, the State Fiscal Officer shall transfer to the Budget Contingency Fund the amount listed below from the following fund:

Agency/Fund	*Fund No.*	*Amount*
Unclaimed Property Fund	3178	$1,208,932.00
TOTAL		$1,208,932.00

"(b) From the funds transferred to the Budget Contingency Fund under paragraph (a) of this subsection, the State Fiscal Officer shall transfer the sum of One Million Two Hundred Eight Thousand Nine Hundred Thirty-two Dollars ($1,208,932.00) to the Mississippi Gaming Commission. The commission is authorized to escalate its budget by the amount transferred to the commission under this paragraph and expend that sum for the purposes authorized by law. The sum transferred to the commission under this paragraph shall be a temporary loan to the commission, and the commission shall repay to the Budget Contingency Fund the full amount of that sum during fiscal year 2011.

"(2) During fiscal year 2011, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$103,904,000.00
Working Cash-Stabilization Reserve Fund	3992	80,000,000.00
Unclaimed Property Fund	3178	3,010,952.00
TOTAL		$186,914,952.00"

"Laws of 2010, ch. 562, § 5, as amended by Laws of 2011, ch. 506, § 3, provides:

"SECTION 5. Because the federal government has extended the increased Federal Medical Assistance Percentage (FMAP) provided for in the American Recovery and Reinvestment Act of 2009, the State Fiscal Officer shall transfer to the Governor's

Office-Division of Medicaid special fund, Fund No. 3328, during fiscal year 2011, from any funds to the credit of the following agencies, the amounts set forth below:

Agency	Amount
"Department of Mental Health	$8,028,557.00
"Department of Rehabilitation Services	1,707,660.00
"State Department of Health	959,891.00
"University of Mississippi Medical Center	5,349,446.00
"Total	$16,045,554.00

"The Governor's Office-Division of Medicaid is authorized to escalate its budget and expend funds during fiscal year 2011 by the amount transferred in this section."

Laws of 2012, ch. 547, §§ 1 & 7 provide:

"SECTION 1. (1) During fiscal year 2012, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, the amount listed below from the following fund:

AGENCY/FUND	FUND NO.	AMOUNT
State General Fund	2999	$183,726,491.00

"(2) During fiscal year 2013, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
State General Fund	2999	$49,622,038.00
Hurricane Disaster Reserve Fund	3755	26,611,711.00
Department of Finance and Admin.		
Disaster Recovery Fund	3996	785, 244.00
Treasurer's Office-Unclaimed Prop.	3178	3,000,000.00
Capital Post-Conviction Counsel	3098	1,037,267.00
Department of Insurance	3501	6,000,000.00
Public Service Commission —		
Public Utilities	3812	536,872.00
IHL State Court Education Fund	3257	1,500,000.00
Working Cash-Stabilization		
Reserve Fund	3992	99,562,168.00
TOTAL		$188,655,299.00

"(3) During Fiscal Year 2013, the State Fiscal Officer shall transfer Four Hundred Thousand Dollars ($400,000.00) from the Budget Contingency Fund to the Law Enforcement Officers and Fire Fighters Death Benefits Fund (Fund No. 371G).

"The Department of Public Safety shall have authority to receive, budget and expend the Four Hundred Thousand Dollars ($400,000.00) transferred to Fund No. 371G in this section. This escalation shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

"(4) During Fiscal Year 2013, the State Fiscal Officer shall transfer Two Million Dollars ($2,000,000.00) from the Department of Finance and Administration Air Transport Fund (Fund No. 3135) to the Capital Expense Fund (Fund No. 399C).

"(5) During Fiscal Year 2013, the State Fiscal Officer shall transfer Thirty-three Thousand Four Hundred Twenty-two Dollars ($33,422.00) from the Capital Post-Conviction Counsel Fund (Fund No. 3098) to the Judicial Performance Fund (Fund No. 3095). If House Bill No. 878, Regular Legislative Session of 2012, is enacted increasing Fiscal Year 2013 fees for the Judicial Performance Commission above the Fiscal Year 2012 level, the State Fiscal Officer shall not make the above-mentioned transfer from the Capital Post-Conviction Counsel Fund to the Judicial Performance Fund.

"(6) During Fiscal Year 2012, the State Fiscal Officer shall transfer Two Million Five Hundred Thousand Dollars ($2,500,000.00) from the MMEIA-Tax Incentive Fund (Fund No. 34TT) to the Budget Contingency Fund (Fund No. 3177).

"(7) During Fiscal Year 2013, the State Fiscal Officer shall transfer Ten Million Ninety-seven Thousand Four Hundred Forty-three Dollars ($10,097,443.00) from the Capital Expense Fund (Fund No. 399C) to the Budget Contingency Fund (Fund No. 3177).

"(8) During Fiscal Year 2013, the State Fiscal Officer shall transfer Three Million Dollars ($3,000,000.00) from the Budget Contingency Fund (Fund No. 3177) to the Mississippi Development Authority.

"The Mississippi Development Authority shall have authority to receive, budget and expend Three Million Dollars ($3,000,000.00) of Budget Contingency Funds transferred in this section. This escalation shall be done in accordance with the rules and regulations of the Department of Finance and Administration in a manner consistent with the escalation of federal funds.

Laws of 2009, 2nd Ex Sess, ch. 126, §§ 4 and 5 provide:

"SECTION 4. The State of Mississippi shall repay the Mississippi Department of Transportation Thirty Million Dollars ($30,000,000.00) from sales tax collections during the period beginning July 1, 2012, and ending June 30, 2013, at a time to be determined by the State Treasurer. This repayment may be made in monthly increments in order to not disrupt the normal cash flow to the State General Fund.

"SECTION 5. During the period from the effective date of House Bill No. 40, 2009 Second Extraordinary Session, through June 30, 2010, the Mississippi Department of Transportation shall be exempt from any transfer of special funds into the State General Fund or the Budget Contingency Fund created in Section 27-103-301, Mississippi Code of 1972, that is directed or authorized by the Department of Finance and Administration or the State Treasurer."

Laws of 2009, 2nd Ex Sess, ch. 126, § 4, was repealed by Laws of 2012, ch. 547, § 7, effective from and after July 1, 2012.

Laws of 2012, ch. 558, § 1, provides:

"SECTION 1. All funds received by or on behalf of the State of Mississippi through a negotiated settlement for economic damages in connection with the explosion on, and sinking of, the mobile offshore drilling unit Deepwater Horizon, except for any funds that are required by the settlement to be paid to any other public entity, shall be deposited into the Budget Contingency Fund for appropriation by the Legislature."

Laws of 2013, ch. 301, § 1, provides:

"SECTION 1. During fiscal year 2013, the State Fiscal Officer shall transfer the sum of Fifty-two Million Dollars ($52,000,000.00) from the Motor Vehicle Ad Valorem Tax Reduction Fund created in Section 27-51-105 (Fund No. 3769) to the Budget Contingency Fund."

Laws of 2013, ch. 518, § 1, provides:

"SECTION 1. During fiscal year 2014, the State Fiscal Officer shall transfer to the Budget Contingency Fund created in Section 27-103-301, out of the following enumerated funds, the amounts listed below from each fund:

Agency/Fund	*Fund No.*	*Amount*
General Fund	2999	$17,588,141.00
Working Cash-Stabilization Reserve Fund	3992	109,812,343.00
Secretary of State	3111	226,000.00
Insurance Department	3501	6,000,000.00
Treasurer's Office-Unclaimed Prop.	3178	3,950,000.00
Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund	3079	1,620,045.00
TOTAL		$139,196,529.00"

§ 27-103-303. Capital Expense Fund created; purposes.

Editor's Note — Laws of 2013, ch. 518, § 4, as amended by Laws of 2014, ch. 534, § 6, provides:

"SECTION 4. The Executive Director of the Department of Finance and Administration shall have the authority to transfer from the Capital Expense Fund created in Section 27-103-303 such amounts as necessary not exceeding a total of Two Million Dollars ($2,000,000.00) for the purpose of paying the cost of repairs of damage caused by the hail storm on March 18, 2013. These funds may be transferred in anticipation of insurance settlements from the storm. No funds transferred under this section shall be expended for agency administrative costs, including, but not limited to, agency employee salaries or travel. The Executive Director of the Department of Finance and Administration may escalate the department's budget and expend the transferred funds in accordance with the rules and regulations of the department in a manner consistent with the escalation of federal funds."

Laws of 2013, ch. 518, § 5, as amended by Laws of 2014, ch. 534, § 7, provides:

"SECTION 5. The Executive Director of the Department of Finance and Administration shall have the authority to transfer from the Capital Expense Fund created in Section 27-103-303 such amounts as necessary not exceeding a total of Fifteen Million Dollars ($15,000,000.00) for the purpose of providing the funds necessary to continue the operations of the MAGIC project, the state's primary data processing system for tracking, managing, and reporting critical financial information. The Department of Finance and Administration shall notify the State Treasurer, the Lieutenant Governor, the Speaker of the House of Representatives, the respective Chairmen of the Senate Appropriations Committee, the Senate Finance Committee, the House Appropriations Committee, the House Ways and Means Committee and the Legislative Budget Office when funds are transferred under this section. No funds transferred under this section shall be expended for agency administrative costs, including, but not limited to, agency employee salaries or travel. The Executive Director of the Department of Finance and Administration may escalate the department's budget and expend the transferred funds in accordance with the rules and regulations of the department in a manner consistent with the escalation of federal funds."

Laws of 2014, ch. 534, § 5, provides:

"SECTION 5. During fiscal year 2014, the State Fiscal Officer shall transfer from the State General Fund to the Capital Expense Fund the sum of Eight Hundred Thousand Dollars ($800,000.00)."

CHAPTER 104

State Fiscal Affairs

IN GENERAL

§ 27-104-5. Executive Director of department; salary; bond; powers and duties.

Editor's Note — Laws of 2014, ch. 534, § 5 provides:
"SECTION 5. During fiscal year 2014, the State Fiscal Officer shall transfer from the State General Fund to the Capital Expense Fund the sum of Eight Hundred Thousand Dollars ($800,000.00)."

§ 27-104-7. Creation of public procurement review board; quorum; meetings; support personnel; powers and duties.

(1) There is created within the Department of Finance and Administration the Public Procurement Review Board, which shall be composed of the Executive Director of the Department of Finance and Administration, the head of the Office of Budget and Policy Development and an employee of the Office of General Services who is familiar with the purchasing laws of this state. The Executive Director of the Department of Finance and Administration shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Two (2) members shall be a quorum. No action shall be valid unless approved by the chairman and one (1) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. The board shall meet on a monthly basis and at any other time when notified by the chairman. Necessary clerical and administrative support for the board shall be provided by the Department of Finance and Administration. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office.

(2) The Public Procurement Review Board shall have the following powers and responsibilities:

(a) Approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities and equipment, except computer equipment acquired pursuant to Sections 25-53-1 through 25-53-29;

(b) Adopt regulations governing the approval of contracts let for the construction and maintenance of state buildings and other state facilities;

(c) Adopt regulations governing any lease or rental agreement by any state agency or department, including any state agency financed entirely by federal funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration. These regulations shall require

each agency requesting to lease such space to provide the following information that shall be published by the Department of Finance and Administration on its website: the agency to lease the space; the terms of the lease; the approximate square feet to be leased; the use for the space; a description of a suitable space; the general location desired for the leased space; the contact information for a person from the agency; the deadline date for the agency to have received a lease proposal; any other specific terms or conditions of the agency; and any other information deemed appropriate by the Division of Real Property Management or the Public Procurement Review Board;

(d) Adopt, in its discretion, regulations to set aside at least five percent (5%) of anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the department and shall be subject to all bid requirements. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder; however, if no minority bid is available or if the minority bid is more than two percent (2%) higher than the lowest bid, then bids shall be accepted and awarded to the lowest and best bidder. However, the provisions in this paragraph shall not be construed to prohibit the rejection of a bid when only one (1) bid is received. Such rejection shall be placed in the minutes. For the purposes of this paragraph, the term "minority business" means a business which is owned by a person who is a citizen or lawful permanent resident of the United States and who is:

(i) Black: having origins in any of the black racial groups of Africa;

(ii) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race;

(iii) Asian American: having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(iv) American Indian or Alaskan Native: having origins in any of the original peoples of North America; or

(v) Female;

(e) In consultation with and approval by the Chairmen of the Senate and House Public Property Committees, approve leases, for a term not to exceed eighteen (18) months, entered into by state agencies for the purpose of providing parking arrangements for state employees who work in the Woolfolk Building, the Carroll Gartin Justice Building or the Walter Sillers Office Building.

(3) No member of the Public Procurement Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for public construction under this chapter.

(4) Notwithstanding any other laws or rules to the contrary, the provisions of subsection (2) of this section shall not be applicable to the Mississippi State Port Authority at Gulfport.

SOURCES: Laws, 1984, ch. 488, § 77; Laws, 1988 Ex Sess, ch. 14, § 69; Laws, 1989, ch. 532, § 55; Laws, 1989, ch. 544, § 13; Laws, 1990, ch. 522, § 3; Laws, 2005, ch. 504, § 2; Laws, 2006, ch. 457, § 1; Laws, 2010, ch. 314, § 1; Laws, 2012, ch. 485, § 1; Laws, 2012, ch. 512, § 1; Laws, 2014, ch. 533, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of ch. 512, Laws of 2012, effective July 1, 2012 (approved May 1, 2012), amended this section. Section 1 of ch. 485, Laws of 2012, effective from and after passage (approved April 26, 2012), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 512, Laws of 2012, which contains language that specifically provides that it supersedes § 27-104-7 as amended by Laws of 2012, ch. 485.

Amendment Notes — The first 2012 amendment (ch. 485) added (4).

The second 2012 amendment (ch. 512) added the last sentence in (2)(c); substituted "However, the provisions in this paragraph" for "Provided, however, that the provisions herein" in the third sentence in (2)(d); and added (4).

The 2014 amendment added "or" to the end of (2)(d)(iv) and deleted the last sentence in (2)(e), which read "The provisions of this paragraph (e) shall stand repealed on July 1, 2014."

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-104-13. Revision of budget estimates for and reduction of funding allocations to general-fund and special-fund agencies and for "administration and other expenses" budget of Mississippi Department of Transportation; general fund revenue estimate to be adopted by Legislative Budget Office by sine die adjournment; transfers to General Fund.

(1) The State Fiscal Officer may disapprove or reduce and revise the estimates of general funds and state-source special funds for any general fund or special fund agency and for the "administration and other expenses" budget of the Mississippi Department of Transportation, in an amount not to exceed five percent (5%), if at any time he finds that funds will not be available within the period for which the budget is drawn, or if at any time he finds that the requested expenditures, or any part thereof, are not authorized by law, and that action shall be reported to the Legislative Budget Office.

The State Fiscal Officer may, upon his determination of need based upon a finding that funds will not be available within the period for which the budget is drawn, transfer funds as provided in Section 27-103-203, from the Working Cash-Stabilization Reserve Fund to the General Fund to supplement the general fund revenue.

If the estimates of general funds and state-source special funds of all general fund and special fund agencies and of the "administration and other expenses" budget of the Mississippi Department of Transportation have been reduced by five percent (5%), additional reductions may be made, but shall consist of a uniform percentage reduction of general funds and state-source special funds to all general fund and special fund agencies and to the

"administration and other expenses" budget of the Mississippi Department of Transportation.

Any state-source special funds reduced under the provisions of this subsection (1) shall be transferred to the State General Fund upon requisitions for warrants signed by the respective agency head, and the transfer shall be made within a reasonable period to be determined by the State Fiscal Officer.

The provisions of this subsection (1) authorizing the State Fiscal Officer to disapprove or reduce and revise the estimates of general funds and state-source special funds for the "administration and other expenses" budget of the Mississippi Department of Transportation shall be suspended during the period from June 30, 2009, through June 30, 2010.

(2) The Department of Revenue and University Research Center, utilizing all available revenue forecast data, shall annually develop a general fund revenue estimate to be adopted by the Legislative Budget Office as of the date of sine die adjournment. If, at the end of October, or at the end of any month thereafter of any fiscal year, the revenues received for the fiscal year fall below ninety-eight percent (98%) of the Legislative Budget Office general fund revenue estimate at the date of sine die adjournment, the State Fiscal Officer shall reduce allocations of general funds and state-source special funds to general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation, in an amount necessary to keep expenditures within the sum of actual general fund receipts, including any transfers to the General Fund from the Working Cash-Stabilization Reserve Fund for the fiscal year.

The State Fiscal Officer may, upon his determination of need based on the revenue shortfall, transfer funds as provided in Section 27-103-203 from the Working Cash-Stabilization Reserve Fund to the General Fund to supplement the general fund revenue. State-source special funds in an amount equal to any reduction made under the provisions of this subsection (2) shall be transferred to the State General Fund upon requisitions for warrants signed by the respective agency head, and the transfer shall be made within a reasonable period to be determined by the State Fiscal Officer.

No agency's allocation shall be reduced in an amount to exceed five percent (5%); however, if the allocations of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation have been reduced by five percent (5%), any additional reductions required to be made under this subsection (2) shall consist of a uniform percentage reduction of general funds and state-source special funds to all general fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation. Any receipt from loans authorized by Sections 31-17-101 through 31-17-123 shall not be included as revenue receipts.

The State Fiscal Officer shall immediately send notice of any action taken under authority of this subsection (2) to the Legislative Budget Office.

The provisions of this subsection (2) requiring the State Fiscal Officer to reduce allocations of general funds and state-source special funds to general

fund and special fund agencies and to the "administration and other expenses" budget of the Mississippi Department of Transportation shall be suspended during the period from June 30, 2009, through June 30, 2010.

(3) For the purpose of this section, the term "state-source special funds" means any special funds in any agency derived from any source, but shall not include the following special funds: special funds derived from federal sources, from local or regional political subdivisions, from agricultural commodity assessments, or from donations; special funds derived from additional fees paid for the issuance of distinctive motor vehicle license tags or plates authorized under the provisions of Chapter 19, Title 27, Mississippi Code of 1972; special funds held in a fiduciary capacity for the benefit of specific persons or classes of persons; special funds of the Mississippi Veterans Affairs Board that are paid to the board by the veteran residents of state veterans homes to fund their monthly expenses at the state veterans homes; self-generated special funds of the state institutions of higher learning or the state community or junior colleges; special funds of Mississippi Industries for the Blind, the State Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway District, Pearl River Basin Development District, Pearl River Valley Water Management District, Tombigbee River Valley Water Management District, Yellow Creek Watershed Authority, or Coast Coliseum Commission; special funds of the Department of Wildlife, Fisheries and Parks and the Department of Marine Resources derived from the issuance of hunting or fishing licenses; and special funds generated by agencies whose primary function includes the establishment of standards and the issuance of licenses for the practice of a profession within the State of Mississippi.

SOURCES: Laws, 1984, ch. 488, § 80; Laws, 1986, ch. 480, § 2; Laws, 1989, ch. 532, § 57; Laws, 1992, ch. 484 § 9; Laws, 2005, ch. 440, § 1; Laws, 2005, 5th Ex Sess, ch. 12, § 2; Laws, 2009, 2nd Ex Sess, ch. 126, § 6; Laws, 2011, ch. 329, § 1; Laws, 2011, ch. 504, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 1 of ch. 329, Laws of 2011, effective from and after July 1, 2011 (approved March 9, 2011), amended this section. Section 1 of ch. 504, Laws of 2011, effective from and after July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at its July 13, 2011, meeting.

Amendment Notes — The first 2011 amendment (ch. 329) substituted "Department of Revenue" for "State Tax Commission" at the beginning of (2); and inserted "and the Department of Marine Resources" following "Department of Wildlife, Fisheries and Parks" near the end of (3).

The second 2011 amendment (ch. 504) substituted "Department of Revenue" for "State Tax Commission" in the first sentence of (2); and in (3), inserted "special funds derived from additional fees ... Mississippi Code of 1972" and "special funds of the Mississippi Veterans Affairs Board ... state veterans homes."

Cross References — Urban renewal and redevelopment, generally, see §§ 43-35-1 et seq.

§ 27-104-17. Allotment period; time for filing of budget estimates; restriction of agency expenditures; special reserve funds; emergency measures; prior approval required to hire certain retired employees under contract.

(1) An allotment period shall be one-half (½) of twelve (12) months, and expenditure one-half (½) of the appropriated amount, unless otherwise specified in the appropriation bill or justified by the agency to the Department of Finance and Administration, and the first allotment period shall commence on July 1. Estimates shall be filed with the Department of Finance and Administration not later than the first day of the month preceding the beginning period.

The Department of Finance and Administration may, in its discretion, restrict an agency to a monthly allotment period when it becomes evident that an agency's rate of expenditure to date indicates this restriction will be necessary to prevent depletion of its appropriation prior to the close of the fiscal year or when the condition of the State General Fund requires monthly monitoring and control of the rate of General Fund expenditures.

(2) Unless otherwise specified in the agency appropriation bill, in the event any emergency or unforeseen circumstances shall arise, the agency head may authorize increases in major objects of expenditure within each specific budget within each appropriation bill in total amounts not to exceed ten percent (10%) of the appropriated amount of each object, provided that other major objects of expenditure are decreased by a corresponding dollar amount. Except as otherwise authorized in Section 7-5-39, no transfers shall be authorized which increase or decrease the major object of expenditure "Salaries, Wages and Fringe Benefits," or which increase the major object of expenditure "Capital Outlay — Equipment." The agency head shall submit written justification for the transfer to the Legislative Budget Office, the Department of Finance and Administration, and the State Auditor, on or before the fifteenth of the month prior to the effective date of the transfer. The transfer shall be effective the first working day of the month following timely submissions required herein. In cases of extreme hardship, certified in writing by the agency head and submitted with timely submissions required herein, the Executive Director of the Department of Finance and Administration, in his discretion, may authorize an earlier effective date for the transfer.

(3) No former employee who is receiving State of Mississippi retirement benefits shall be hired under contract for an amount exceeding Twenty Thousand Dollars ($20,000.00) a year without prior approval by an agency's proper governing board or authority. Upon approval of such contracts a written report shall be submitted detailing the cost and need of such contract services to the Chairmen and members of the Senate and House Appropriations Committees.

SOURCES: Laws, 1984, ch. 488, § 82; Laws, 1985, ch. 525, § 4; Laws, 1989, ch. 532, § 59; Laws, 1989, ch. 544, § 18; Laws, 1991, ch. 603, § 1; Laws, 1992, ch.

484 § 14; Laws, 1996, ch. 308, § 1; Laws, 2005, 5th Ex Sess, ch. 19, § 1; Laws, 2009, ch. 329, § 1; Laws, 2012, ch. 546, § 11, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment deleted "Provided further, that" from the beginning of the second paragraph of (1); in (2), deleted "Except as otherwise provided in subsection (3), and" from the beginning, and added the exception at the beginning of the second sentence; and deleted (3), which dealt with provisions from March 12, 2009 to June 30, 2009; and redesignated former (4) as (3).

§ 27-104-19. Availability of funds after approval of operating budget.

Except as otherwise authorized in Section 7-5-39, when an operating budget has been approved, the amount approved shall be available and shall constitute the maximum of obligations or indebtedness which may be incurred by the agency for any purpose during the allotment period to be paid from such funds.

SOURCES: Laws, 1984, ch. 488, § 83; Laws, 2012, ch. 546, § 12, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the exception at the beginning.

§ 27-104-33. Payment by credit card, charge card, debit card, or other form of electronic payment of amounts owed to state agencies.

The State Department of Finance and Administration shall establish policies that allow the payment of various fees and other accounts receivable to state agencies, and the payment for retail merchandise sold by state agencies, by credit cards, charge cards, debit cards and other forms of electronic payment in the discretion of the department. Any fees or charges associated with the use of such electronic payments shall be assessed to the user of the electronic payment as an additional charge for processing the electronic payment, so that the user will pay the full cost of using the electronic payment.

Agencies, with the approval of the Department of Finance and Administration, may bear the full cost of processing such electronic payments if the agency can demonstrate to the department's satisfaction that they are able to assume these costs and provide the related service for the same or lesser cost. However, state agencies may bear the full cost of processing such electronic payments for retail merchandise sold by state agencies.

SOURCES: Laws, 2001, ch. 511, § 1; Laws, 2005, ch. 526, § 1; Laws, 2013, ch. 441, § 2, eff from and after passage (approved March 25, 2013.)

Amendment Notes — The 2013 amendment inserted "and the payment for retail merchandise sold by state agencies" in the first sentence of the first paragraph; and added the last sentence of the second paragraph.

DEPARTMENT OF FINANCE AND ADMINISTRATION

§ 27-104-105. Prior clearance by Attorney General and State Personnel Board or authorization under Section 7-5-39 required for payment of certain claims for legal services; exceptions.

The Department of Finance and Administration shall not process any warrant requested by any state agency for payment for legal services without first determining that the services and contract were approved either by the Attorney General and the State Personnel Board, or as authorized under Section 7-5-39(3); contracts for legal services performed for the State Highway Department in eminent domain cases shall not require approval by the State Personnel Board. The State Auditor shall test for compliance with this section.

SOURCES: Laws, 1991, ch. 473, § 1; Laws, 1992, ch. 470, § 1; Laws, 2012, ch. 546, § 7, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment, in the first sentence, inserted "either" and "or as authorized under Section 7-5-39(3)."

MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT

§ 27-104-152. Legislative findings and intent.

The Legislature finds that the public should be able to easily access the details on how the state is spending tax dollars and other state funds and what performance results are achieved for the expenditures. It is the intent of the Legislature that the state, acting through the Department of Finance and

Administration, create and maintain a searchable website providing access, to the extent possible, to where, for what purpose and what results are achieved for all taxpayer investments in state government.

SOURCES: Laws, 2011, ch. 489, § 1, eff from and after July 1, 2011.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-104-153. Definitions.

As used in Sections 27-104-151 through 27-104-159:

(a) "Searchable website" means an Internet site that:

(i) Allows the public to access information identified in Sections 27-104-151 through 27-104-159 without any fee or charge to the public for that access;

(ii) Provides keyword or other efficient search capability to support the public's ability to find, aggregate and display that information with reasonable ease by accessing a single website; and

(iii) Allows the public to programmatically search and access all data in a serialized machine readable format, such as XML, via a Web-services application programming interface.

(b) "Agency" means a state agency, department, institution, board, commission, council, office, bureau, division, committee or subcommittee of the state. The term "agency" includes individual agencies and programs as well as multiple agencies whenever programs and activities involve more than one (1) agency. The term "agency" includes all elective offices in the executive, legislative and judicial branches of state government. The term "agency" does not include counties or municipalities.

(c) "Entity" or "recipient" means a corporation, association, union, limited liability company, limited liability partnership, grantee, contractor, county, municipality or other local government entity, or any other legal business entity, including a nonprofit entity. The term "entity" or "recipient" does not include an individual recipient of state public assistance.

(d) "Expenditure of state funds" means the disbursement or transfer of any funds, from any source or funds, whether appropriated or nonappropriated, from any agency. The term "expenditure of state funds" includes the expenditures from bond proceeds.

(e) "Funding action" means the transfer of funds from a state agency to another entity for a specific purpose. These would include subgranting of funds for specific purposes or the funding through bonds or other authority specific projects and actions.

(f) "Funding source" means the state account against which an expenditure is recorded.

(g) "State audit or report" means any audit or report issued by the State Auditor, Joint Legislative Committee on Performance Evaluation and Ex-

penditure Review (PEER) or an executive body relating to the entity or recipient of funds or to the budget program or activity or agency.

SOURCES: Laws, 2008, ch. 470, § 3; Laws, 2011, ch. 489, § 2; brought forward without change, Laws, 2013, ch. 418, § 2, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment, in (a), rewrote (ii), and added (iii); added (b), (c) and (e) through (g); redesignated and rewrote former (b) as (d); and made minor stylistic changes.

The 2013 amendment brought the section forward without change.

§ 27-104-155. Development, operation and content of searchable website containing information on expenditures of state funds from all funding sources; no disclosure of proprietary information; time period for updating information on website; creation and content of IHL Accountability and Transparency website; creation and content of Community and Junior Colleges Accountability and Transparency website.

(1) The Department of Finance and Administration shall develop and operate a searchable website that includes information on expenditures of state funds from all funding sources. The website shall have a unique and simplified website address, and the department shall require each agency that maintains a generally accessible Internet site or for which a generally accessible Internet site is maintained to include a link on the front page of the agency's Internet site to the searchable website required under this section.

(a) With regard to disbursement of funds, the website shall include, but not be limited to:

(i) The name and principal location of the entity or recipients of the funds, excluding release of information relating to an individual's place of residence, the identity of recipients of state or federal assistance payments, and any other information deemed confidential by state or federal law relating to privacy rights;

(ii) The amount of state funds expended;

(iii) A descriptive purpose of the funding action or expenditure;

(iv) The funding source of the expenditure;

(v) The budget program or activity of the expenditure;

(vi) The specific source of authority and descriptive purpose of the expenditure, to include a link to the funding authorization document(s) in a searchable PDF form;

(vii) The specific source of authority for the expenditure including, but not limited to, a grant, subgrant, contract, or the general discretion of the agency director, provided that if the authority is a grant, subgrant or contract, the website entry shall include a grant, subgrant or contract number or similar information that clearly identifies the specific source

of authority. The information required under this paragraph includes data relative to tax exemptions and credits;

(viii) The expending agency;

(ix) The type of transaction;

(x) The expected performance outcomes achieved for the funding action or expenditure;

(xi) Links to any state audit or report relating to the entity or recipient of funds or the budget program or activity or agency; and

(xii) Any other information deemed relevant by the Department of Finance and Administration.

(b) When the expenditure of state funds involves the expenditure of bond proceeds, the searchable website must include a clear, detailed description of the purpose of the bonds, a current status report on the project or projects being financed by the bonds, and a current status report on the payment of the principal and interest on the bonds.

(c) The searchable website must include access to an electronic summary of each grant, including amendments; subgrant, including amendments; contract, including amendments; and payment voucher that includes, wherever possible, a hyperlink to the actual document in a searchable PDF format, subject to the restrictions in paragraph (d) of this section. The Department of Finance and Administration may cooperate with other agencies to accomplish the requirements of this paragraph.

(d) Nothing in Sections 27-104-151 through 27-104-159 shall permit or require the disclosure of trade secrets or other proprietary information, including confidential vendor information, or any other information that is required to be confidential by state or federal law.

(e) The information available from the searchable website must be updated no later than fourteen (14) days after the receipt of data from an agency, and the Department of Finance and Administration shall require each agency to provide to the department access to all data that is required to be accessible from the searchable website within fourteen (14) days of each expenditure, grant award, including amendments; subgrant, including amendments; or contract, including amendments; executed by the agency.

(f) The searchable website must include all information required by this section for all transactions that are initiated in fiscal year 2015 or later. In addition, all information that is included on the searchable website from the date of the inception of the website until July 1, 2014, must be maintained on the website according to the requirements of this section before July 1, 2014, and remain accessible for ten (10) years from the date it was originally made available. All data on the searchable website must remain accessible to the public for a minimum of ten (10) years.

(2) The Board of Trustees of State Institutions of Higher Learning shall create the IHL Accountability and Transparency website to include its executive office and the institutions of higher learning no later than July 1, 2012. This website shall:

(a) Provide access to existing financial reports, financial audits, budgets and other financial documents that are used to allocate, appropriate, spend and account for appropriated funds;

(b) Have a unique and simplified website address;

(c) Be directly accessible via a link from the main page of the Department of Finance and Administration website, as well as the IHL website and the main page of the website of each institution of higher learning;

(d) Include other links, features or functionality that will assist the public in obtaining and reviewing public financial information;

(e) Report expenditure information currently available within these enterprise resource planning (ERP) computer systems; and

(f) Design the reporting format using the existing capabilities of these ERP computer systems.

(3) The Mississippi Community College Board shall create the Community and Junior Colleges Accountability and Transparency website to include its executive office and the community and junior colleges no later than July 1, 2012. This website shall:

(a) Provide access to existing financial reports, financial audits, budgets and other financial documents that are used to allocate, appropriate, spend and account for appropriated funds;

(b) Have a unique and simplified website address;

(c) Be directly accessible via a link from the main page of the Department of Finance and Administration website, as well as the Mississippi Community College Board website and the main page of the website of each community and junior college;

(d) Include other links, features or functionality that will assist the public in obtaining and reviewing public financial information;

(e) Report expenditure information currently available within the computer system of each community and junior college; and

(f) Design the reporting format using the existing capabilities of the computer system of each community and junior college.

SOURCES: Laws, 2008, ch. 470, § 4; Laws, 2011, ch. 489, § 3; Laws, 2013, ch. 418, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2011 amendment rewrote the section to expand the data that is required to be maintained on searchable websites.

The 2013 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges (SBCJC)" throughout both versions of the section; added (1)(b) and redesignated remaining subdivisions accordingly.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-104-157. Form and timeline for state agencies to report information.

The Department of Finance and Administration shall have the authority to establish the form, processes and procedures, and timelines for agencies to report the information required by Sections 27-104-151 through 27-104-159. At the latest, each agency shall provide access to all required data within fourteen (14) days after the data becomes available to the agency. All agencies shall fully cooperate with the Department of Finance and Administration in compiling and providing all information necessary to comply with the requirements of Sections 27-104-151 through 27-104-159.

SOURCES: Laws, 2008, ch. 470, § 5; Laws, 2011, ch. 489, § 4, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote the first sentence; added the second sentence; and substituted "All agencies shall" for "All departments, agencies and entities of state government shall" in the last sentence.

§ 27-104-158. State Auditor to examine agencies' compliance with Sections 27-104-151 through 27-104-159.

The Office of the State Auditor shall examine agencies' compliance with the requirements of Sections 27-104-151 through 27-104-159 in the course of the powers and duties of the office as prescribed in Section 7-7-211.

SOURCES: Laws, 2011, ch. 489, § 5, eff from and after July 1, 2011.

§ 27-104-159. Relation to Mississippi Public Records Act.

Nothing in Sections 27-104-151 through 27-104-159 shall be construed to supersede the Mississippi Public Records Act of 1983, as amended, except that Sections 27-104-151 through 27-104-158 shall apply to expenditures of the legislative branch.

SOURCES: Laws, 2008, ch. 470, § 6; Laws, 2011, ch. 489, § 6, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added "except that Sections 27-104-151 through 27-104-158 shall apply to expenditures of the legislative branch" at the end of the section.

§ 27-104-161. No authority to review, approve or deny expenditures of Legislature.

No provision of Sections 27-104-151 through 27-104-159 shall be construed as conferring upon the Department of Finance and Administration any authority to review, approve or deny any expenditures or contracts entered into by the Legislature or any of its committees, or to impose any requirement

on the Legislature or any of its committees to take any action other than to disclose expenditures and contracts entered into on or after July 1, 2011.

SOURCES: Laws, 2011, ch. 489, § 7, eff from and after July 1, 2011.

§ 27-104-163. Publication of meeting notice on searchable website; applicability.

The Department of Finance and Administration shall publish on its searchable website notice of any regular meeting held by a state agency, other than a legislative committee, in accordance with Section 25-41-13. For purposes of this section, the term "state agency" means an agency, department, institution, board, commission, council, office, bureau, division, committee or subcommittee of the state. However, the term "state agency" does not include institutions of higher learning, community and junior colleges, counties or municipalities.

SOURCES: Laws, 2013, ch. 388, § 2, eff from and after July 1, 2013.

§ 27-104-165. Phased-in plan for procurement portal authorized.

The Department of Finance and Administration, with assistance from the Mississippi Department of Information Technology Services and the State Personnel Board, may develop a phased-in plan that ensures that the procurement portal required under Section 25-53-151 be fully functional by July 1, 2015.

SOURCES: Laws, 2014, ch. 447, § 2, eff from and after July 1, 2014.

CHAPTER 105

Depositories

ARTICLE 1.

STATE DEPOSITORIES.

§ 27-105-33. Deposit and investment of excess state funds.

It shall be the duty of the State Treasurer and the Executive Director of the Department of Finance and Administration on or about the tenth day of each month, and in their discretion at any other time, to analyze carefully the amount of cash in the General Fund of the state and in all special funds

credited to any special purpose designated by the State Legislature or held to meet the budgets or appropriations for maintenance, improvements and services of the several institutions, boards, departments, commissions, agencies, persons or entities of the state, and to determine in their opinion when the cash in such funds is in excess of the amount required to meet the current needs and demands of no more than seven (7) business days on such funds and report their findings to the Governor. It shall be the duty of the State Treasurer to provide a cash flow model for forecasting revenues and expenditures on a bimonthly basis and providing technical assistance for its operation. The Department of Finance and Administration shall use the cash flow model furnished by the State Treasurer, in analyzing the amount of funds on deposit and available for investment.

The State Treasurer is hereby authorized, empowered and directed to invest all such excess general and special funds of the state in the following manner:

(a) Funds shall be allocated equally among all qualified state depositories which do not have demand accounts in excess of One Hundred Fifty Thousand Dollars ($150,000.00) until each qualified depository willing to accept the same shall have on deposit or in security repurchase agreements or in other securities authorized in paragraph (d) of this section at interest the sum of Three Hundred Thousand Dollars ($300,000.00). For the purposes of this subsection, no branch bank or branch office shall be counted as a separate depository.

(b) The balance, if any, of such excess general and special funds shall be offered to qualified depositories of the state on a pro rata basis as provided in Section 27-105-9. For the purposes of this subsection, the pro rata share of each depository shall be reduced by the amount of the average daily collected earning balance of demand deposits maintained by the State Treasurer pursuant to Section 27-105-9 during the preceding calendar year, and such reduction shall be allocated pro rata among other eligible depositories.

(c) Funds offered pursuant to paragraphs (a) and (b) above shall be invested for periods of up to one (1) year, and shall bear interest at an interest rate no less than that numerically equal to the bond equivalent yield on direct obligations of the United States Treasury of comparable maturity, as determined by the State Treasurer. In determining such rate, the State Treasurer shall consider the Legislature's desire to distribute funds equitably throughout the state to the maximum extent possible.

(d) To the extent that the State Treasurer shall find that general and special funds cannot be invested pursuant to paragraphs (a), (b) and (c) of this section for the stated maturity up to one (1) year, the Treasurer may invest such funds, together with any other funds required for current operation, as determined pursuant to this section, in the following:

(i) Time certificates of deposit or interest-bearing accounts with qualified state depositories. For those funds determined under prudent judgment of the State Treasurer to be made available for investment in

time certificates of deposit, the rate of interest paid by the depositories shall be determined by rules and regulations adopted and promulgated by the State Treasurer which may include competitive bids. At the time of investment, the interest rate on such certificates of deposit under the provisions of this subparagraph shall be a rate not less than the bond equivalent yield on direct obligations of the United States Treasury with a similar length of maturity.

(ii) Direct United States Treasury obligations, the principal and interest of which are fully guaranteed by the government of the United States.

(iii) United States government agency, United States government instrumentality or United States government sponsored enterprise obligations, the principal and interest of which are fully guaranteed by the government of the United States, such as the Government National Mortgage Association; or United States governmental agency, United States government instrumentality or United States government sponsored enterprise obligations, the principal and interest of which are guaranteed by any United States government agency, United States government instrumentality or United States government sponsored enterprise contained in a list promulgated by the State Treasurer.

(iv) Direct security repurchase agreements and reverse direct security repurchase agreements of any federal book entry of only those securities enumerated in subparagraphs (ii) and (iii) above. "Direct security repurchase agreement" means an agreement under which the state buys, holds for a specified time, and then sells back those securities and obligations enumerated in subparagraphs (ii) and (iii) above. "Reverse direct securities repurchase agreement" means an agreement under which the state sells and after a specified time buys back any of the securities and obligations enumerated in subparagraphs (ii) and (iii) above. At least eighty percent (80%) of the total dollar amount in all repurchase agreements at any one time shall be pursuant to contracts with qualified state depositories.

(e) For the purposes of this section, direct obligations issued by the United States of America shall be deemed to include securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of 15 USCS Section 80(a)-1 et seq., provided that the portfolio of such investment company or investment trust is limited to direct obligations issued by the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and to repurchase agreements fully collateralized by direct obligations of the United States of America, United States government agencies, United States government instrumentalities or United States government sponsored enterprises, and the investment company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian. The State Treasurer and

the Executive Director of the Department of Finance and Administration shall review and approve the investment companies and investment trusts in which funds invested under paragraph (d) of this section may be invested. The total dollar amount of funds invested in all open-end and closed-end management type investment companies and investment trusts at any one time shall not exceed twenty percent (20%) of the total dollar amount of funds invested under paragraph (d) of this section.

(f) Investments authorized by subparagraphs (ii) and (iii) of paragraph (d) shall mature on such date or dates as determined by the State Treasurer in the exercise of prudent judgment to generate a favorable return to the state and will allow the monies to be available for use at such time as the monies will be needed for state purposes. However, the maturity of securities purchased as enumerated in subparagraphs (ii) and (iii) shall not exceed ten (10) years from date of purchase. Special funds shall be considered those funds created constitutionally, statutorily or administratively which are not considered general funds. All funds invested for a period of thirty (30) days or longer under paragraph (d) shall bear a rate at least equal to the current established rate under paragraph (c) of this section.

(g) Any interest-bearing deposits or certificates of deposit shall not exceed at any time the amount insured by the Federal Deposit Insurance Corporation in any one (1) banking institution, the Federal Savings and Loan Insurance Corporation in any one (1) savings and loan association, or other deposit insurance corporation approved by the State Treasurer, unless the uninsured portion is collateralized by the pledge of securities in the manner provided by Section 27-105-5.

(h) Unless otherwise provided, income from investments authorized by the provisions of this subsection shall be credited to the State General Fund.

(i) Not more than Five Hundred Thousand Dollars ($500,000.00) of funds may be invested with foreign financial institutions, and the State Treasurer may enter into price contracts for the purchase or exchange of foreign currency or other arrangements for currency exchange in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) upon specific direction of the Department of Economic and Community Development. The State Treasurer shall promulgate all rules and regulations for applications, qualifications and any other necessary matters for foreign financial institutions.

Any liquidating agent of a depository in liquidation, voluntary or involuntary, shall redeem from the state any bonds and securities which have been pledged to secure state funds and such redemption shall be at the par value or market value thereof, whichever is greater; otherwise, the liquidating agent or receiver may pay off the state in full for its deposits and retrieve the pledged securities without regard to par or market value.

The State Treasurer and the Executive Director of the Department of Finance and Administration shall make monthly reports to the Legislative Budget Office containing a full and complete statement of all funds invested by virtue of the provisions of this section and the revenues derived therefrom and

the expenses incurred therewith, together with all such other information as may seem to each of them as being pertinent to inform fully the Mississippi Legislature with reference thereto.

The State Treasurer shall not deposit any funds on demand deposit with any authorized depository, unless such depository has contracted for interest-bearing accounts or time certificates of deposit.

Notwithstanding the foregoing, any financial institution not meeting the prescribed ratio requirement set forth in Section 27-105-5 whose accounts are insured by the Federal Deposit Insurance Corporation, or any successor to that insurance corporation, may receive state funds in an amount not exceeding the amount which is insured by such insurance corporations and may qualify as a state depository to the extent of such insurance for this purpose only. The paid-in and earned capital funds of such financial institution shall not be included in the computations specified in Section 27-105-9(a) and (b).

SOURCES: Codes, 1930, § 4338; 1942, § 9141; Laws, 1928, Ex. Sess., ch. 79; Laws, 1938, ch. 182; Laws, 1969 Ex. Sess., ch. 53, § 3; Laws, 1972, ch. 443, § 1; ch. 469, § 1; Laws, 1974, ch. 563, § 2; Laws, 1979, ch. 417, § 12; Laws, 1981, ch. 481, § 2; Laws, 1984, ch. 488, § 180; Laws, 1986, ch. 470; Laws, 1988, ch. 473, § 5; Laws, 1988, ch. 518, § 18; Laws, 1989, ch. 540, § 2; Laws, 1989, ch. 544, § 163; Laws, 1990, ch. 570, § 2; Laws, 1992, ch. 367, § 2; Laws, 1992, ch. 484, § 17; Laws, 1993, ch. 436, § 1; Laws, 1995, ch. 321, § 2; Laws, 2014, ch. 401, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted the last sentence from (d)(iii), which read "However, at no time shall the funds invested in United States government agency, United States government instrumentality or United States government sponsored enterprise obligations enumerated in this subparagraph exceed fifty percent (50%) of all monies invested with maturities of thirty (30) days or longer."

ATTORNEY GENERAL OPINIONS

There is no provision in Miss. Code Ann. § 69-44-1 et seq., addressing the interest earned on funds in the Mississippi Corn Promotion Fund. Absent a specific provision otherwise, interest earned on funds in the Mississippi Corn Promotion Fund must be credited to the State General Fund. Spell, February 2, 2007, A.G. Op. #07-00019, 2007 Miss. AG LEXIS 11.

ARTICLE 3.

DEPOSITORIES FOR FUNDS OF LOCAL GOVERNMENTS.

SEC.

§ 27-105-305. Publication for bids to keep county funds; content of bids; acceptance of bid; election by board of supervisors to submit certain bids to State Treasurer to determine acceptance of bid; authority of State Treasurer upon receipt of bids from board of supervisors.

The board of supervisors at the regular December 1997 meeting, and annually thereafter or, in the discretion of the board of supervisors, every two (2) years thereafter, shall give notice to all financial institutions in its county whose accounts are insured by the Federal Deposit Insurance Corporation (or any successor thereto), by publication, that bids will be received from financial institutions at the following January meeting, or some subsequent meeting, for the privilege of keeping the county funds, or any part thereof, which notice shall refer by name to this article and it shall not be necessary to incorporate in the notice the provisions of this article; and at the January meeting, or a subsequent meeting as may be designated in the notice, as the case may be, the board of supervisors shall receive such bids or proposals as the financial institutions may make for the privilege of keeping the county funds, or any part thereof. The bids or proposals shall designate the kind of security as authorized by law which the financial institutions propose to give as security for funds, and the board shall cause the county funds and all other funds in the hands of the county treasurer to be deposited in the qualified financial institution or qualified institutions proposing the best terms and meeting the requirements provided in Section 27-105-315, having in view the safety of such funds. However, if a bank submits a bid or offer to the board of supervisors to act as a depository for the county and the bid or offer, if accepted, would result in a contract in which a member of the board of supervisors would have a direct or indirect interest, the board of supervisors may elect to not open or consider any bids received and submit the matter to the State Treasurer. Upon receipt of the bids received from the board of supervisors, the State Treasury shall open and consider the bids received, select a depository or depositories, make all decisions and take any action within the authority of the board of supervisors under this section relating to the selection of a depository or depositories, including:

(a) The selecting and opening of accounts;

(b) Approval of securities;

(c) The transfer and deposit of funds between depositories; and

(d) All other related functions.

If the board of supervisors elects to open and consider the bids or offers, it shall not open or consider any bid which, if accepted, would result in a contract in which a member of the board of supervisors would have a direct or indirect interest.

SOURCES: Codes, Hemingway's 1917, § 4235; 1930, § 4341; 1942, § 9145; Laws, 1914, ch. 257; Laws, 1926, ch. 248; Laws, 1985, ch. 514, § 9; Laws, 1988, ch. 473, § 7; Laws, 1997, ch. 435, § 1; Laws, 2012, ch. 338, § 1, eff from and after passage (approved Apr. 16, 2012).

Amendment Notes — The 2012 amendment deleted "or the Federal Savings and Loan Insurance Corporation" preceding "(or any successor thereto)" in the first sentence of the first paragraph; and added the second and third paragraphs of the section.

§ 27-105-315. Qualification as depository.

(1) Any financial institution in a county, or in an adjoining county where there is no financial institution in the county qualifying, whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation may qualify as a county depository, if the institution qualifies as a public funds depository under Section 27-105-5 or a public funds guaranty pool member under Sections 27-105-5 and 27-105-6. The qualified financial institution shall secure those deposits by placing qualified securities on deposit with the State Treasurer as provided in Section 27-105-5.

(2) Notwithstanding the foregoing, any financial institution whether or not meeting the prescribed ratio requirement whose accounts are insured by the Federal Deposit Insurance Corporation or any successors to that insurance corporation, may receive county funds in an amount not exceeding the amount that is insured by that insurance corporation and may qualify as a county depository to the extent of that insurance.

(3) For purposes of the foregoing subsection (2), a deposit or investment shall be within the amount that is insured by that insurance corporation if the deposit or investment is made on the following conditions:

(a) The financial institution arranges for the investment of the funds in interest-bearing accounts in one or more banks or savings and loan associations wherever located in the United States, for the account of the public depositor;

(b) The full amount of the principal and accrued interest of each such interest-bearing account is insured by the Federal Deposit Insurance Corporation;

(c) The financial institution acts as custodian for the public depositor with respect to the funds invested in the public depositor's account; and

(d) At the same time that such interest-bearing accounts are invested, the financial institution receives an amount of deposits from customers of other financial institutions located in the United States equal to or greater than the amount of the funds invested by the public depositor through the financial institution.

SOURCES: Codes, Hemingway's 1917, § 4240; 1930, § 4346; 1942, § 9150; Laws, 1912, ch. 194; Laws, 1918, ch. 187; Laws, 1934, chs. 211, 212; Laws, 1936, ch. 168; Laws, 1948, ch. 463, § 1; Laws, 1980, ch. 367; Laws, 1985, ch. 312, § 3; Laws, 1985, ch. 514, § 10; Laws, 1988, ch. 473, § 8; Laws, 2000, ch. 408, § 7; Laws, 2007, ch. 426, § 7; Laws, 2012, ch. 413, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted "interest-bearing accounts" for "book entry certificates of deposit" in (3)(a); substituted "interest-bearing account" for "certificate of deposit" in (3)(b); substituted "funds invested in" for "certificates of deposit issued for" in (3)(c); and substituted "interest-bearing accounts

are invested" for "certificates of deposit are issued" preceding "the financial institution" in (3)(d).

CHAPTER 111

Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018]

SEC.

§ 27-111-1. Payment credit vouchers as credit against income tax and corporation franchise tax liability of certain telecommunications enterprises providing broadband telecommunications services to institutions of higher learning [Repealed effective July 1, 2018].

(1) The Governor shall be authorized to issue to a telecommunications enterprise that has contracted with the state to provide broadband telecommunications service to institutions of higher learning, a payment credit voucher in lieu of an equal amount of cash payment pursuant to the terms of the contract for services. The payment credit voucher shall entitle the telecommunications enterprise to a credit against the aggregate tax liabilities imposed on such telecommunications enterprise by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, in an amount that is equal to such payment credit voucher.

(2) The tax credits in lieu of payment shall only be issued if agreed to by the telecommunications enterprise and authorized by the Governor with a signed payment credit voucher.

(3) The total amount of tax credits authorized under this section in any fiscal year shall not exceed Two Million Dollars ($2,000,000.00) in the aggregate.

(4) The excess, if any, of the credit allowed by this section over the aggregate tax liabilities imposed against the telecommunications enterprise by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, may be utilized against the aggregate tax liabilities imposed by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, on any related member with respect to the telecommunications enterprise. For purposes of this subsection, the term "related member" shall have the meaning given to such term by Section 27-7-17(2)(a)(iv). If the provider or any related member is unable to utilize the full amount of the credit voucher, then the remaining amount shall constitute an overpayment of the tax imposed by Chapter 7 of Title 27, Mississippi Code of 1972, and shall be refunded to the service provider as provided in Section 27-7-51. Any such overpayment shall be paid by the commissioner not later than ninety (90) days after the filing of the applicable tax return by the service

provider. Interest on the overpayment shall be computed under the provisions of Section 27-7-315.

(5) The tax credits authorized by this section shall be used to assist the state in managing its cash flows, shall apply in addition to, and after the application of, all other credits applicable to the service provider and shall not be used in determining any cap placed on any other tax credits applicable to the telecommunications enterprise.

(6) For purposes of this subsection, the term "telecommunications enterprises" shall have the meaning given to such term by Section 57-73-21(14)(b).

(7) This section shall be repealed from and after July 1, 2018.

SOURCES: Laws, 2010, ch. 511, § 28; Laws, 2014, ch. 445, § 5, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Section 57-73-21(14](b)" for "Section 57-73-21(13)(b)" in (6); and made minor stylistic changes throughout.

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